



# REALIZING WOMEN'S RIGHTS TO LAND AND OTHER PRODUCTIVE RESOURCES

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# REALIZING WOMEN'S RIGHTS TO LAND AND OTHER PRODUCTIVE RESOURCES

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# INTRODUCTION

The purpose of this publication is to provide detailed guidance for lawmakers and policymakers, as well as civil society organizations and other stakeholders, to support the adoption and effective implementation of laws, policies and programmes to respect, protect and fulfil women's rights to land and other productive resources. It is based on the results of an expert group meeting held on 25-27 June 2012 in Geneva, Switzerland, during which papers were presented from various sectors and regions. These papers, and the discussions which were informed by them, helped to bring to the surface many of the critical issues facing women today in relation to the enjoyment of their land rights. The publication also incorporates additional case studies submitted by key experts, as well as extensive thematic research.

Land itself can be understood to include farmland, wetland, pasture, rangeland, fishery, forest, as well as harvesting and hunting territories. Throughout this publication the phrase "women's rights to land" must be understood holistically and in a manner which is grounded in the international human rights framework. These rights entail the ability of women to own, use, access, control, transfer, inherit and otherwise take decisions about land and related resources. They also encompass women's rights to secure land tenure and to meaningfully participate at all stages of land law, policy and programme development, from assessment and analysis, programme planning and design, budgeting and financing, implementation, to monitoring and evaluation. Women's land rights must also be understood in the context of intersecting forms of discrimination (see also chap. III.A.2).

While this publication focuses on women's rights to land, it is also recognized that land is inextricably linked to women's access to, use of and control over other productive resources, such as property, fisheries, livestock and game. Therefore, the publication also uses the phrase "women's rights to land and other productive resources" to reflect this broader context.

The publication recommends strategies to be incorporated in domestic laws, policies and programming, as appropriate. States are encouraged to reflect the recommendations within whichever framework best suits their context. Land law is the system of codified rules that are enforced through institutions that govern land tenure. Other types of law, for example marriage and family law, are also relevant to the protection of women's land rights. Land policy refers broadly to the agreements, principles or guidelines which aid in the administration of land and other decision-making related to land. Land programming refers broadly to the activities or functions taken to implement land laws and policies, often by specific institutions responsible for such implementation.

Following this introduction, there is a background analysis of women's rights to land overall, as well as a brief summary of the international dimensions of land issues related to human rights. Chapter I presents an overview of both international and regional legal and policy instruments recognizing women's rights to land and other productive resources.

Building on the human rights principles and standards outlined in chapter I, chapter II discusses ways of advancing a human rights-based approach to women's rights to land and other productive resources. Chapter III presents recommendations accompanied by explanatory commentaries and good practice examples from countries. They are divided into eight sections:

- (a) Overarching issues and strategies
- (b) Security of tenure and prohibition of forced eviction
- (c) Legal systems and access to justice
- (d) Marriage and family
- (e) Land law, policy and programming
- (f) Institutional implementation
- (g) Awareness-raising and training
- (h) Particular groups of women

# BACKGROUND: WHY FOCUS ON WOMEN AND LAND?

Women's access to, use of and control over land and other productive resources are essential to ensuring their right to equality and to an adequate standard of living. These resources help to ensure that women are able to provide for their day-to-day needs and those of their families, and to weather some of life's most difficult challenges. Women's access to land and other productive resources is integrally linked to discussions around global food security, sustainable economic development, as well as the pressing fight against the HIV epidemic and prevention of and responses to gender-based violence.

Throughout the world, gender inequality when it comes to land and other productive resources is intimately related to women's poverty and exclusion. The obstacles which prevent women from effectively enjoying these rights are complex and to a large extent context-specific. Still, many overarching similarities are apparent. Barriers which prevent women's access to, control and use of land and other productive resources often include inadequate legal standards and/or ineffective implementation at national and local levels, as well as discriminatory cultural attitudes and practices at the institutional and community level.

In many communities gender disparities with regard to land and other productive resources are linked to assumptions that men, as heads of households, control and manage land – implicitly reflecting ideas that women are incapable of managing productive resources such as land effectively, that productive resources given to women are “lost to another family” in the event of marriage, divorce or (male) death, and that men will provide for women's financial security.<sup>1</sup> Challenging these discriminatory ideas is critical.

In recent years there has been increased recognition of the importance of women's access to, use of and control over productive resources, including land. There is a

positive correlation between ensuring women's rights to land and other productive resources and improved household welfare, as well as enhanced enjoyment of a broad range of rights for women. This holds true in both rural and urban areas. As a consequence, women acquire more power and autonomy in their families and communities, as well as in their economic and political relationships. Rural women also feel that secure land rights in particular increase their social and political status, and improve their sense of confidence and security. By diminishing the threat of forced eviction or poverty, direct and secure land rights boost women's bargaining power in the home and improve their levels of public participation.<sup>2</sup>

In the context of HIV, women's rights to inheritance and property are “... a crucial factor in reducing women's vulnerability to violence and HIV, as well as empowering women to cope with the social and economic impact of the epidemic at the household level”<sup>3</sup> (see also chap. III.H.2). Similarly positive effects have been reported in connection with domestic violence, with research showing that women's ownership of property is associated with lower levels of both physical and psychological violence.<sup>4</sup> Evidence also suggests that countries where women lack landownership rights or access to credit have on average 60 per cent and 85 per cent more malnourished children, respectively.<sup>5</sup>

Important progress has been made in legal protection. For example, over the past few decades, many countries have reformed their constitutions and national laws to

<sup>1</sup> Canadian HIV/AIDS Legal Network, *Respect, Protect and Fulfill: Legislating for Women's Rights in the Context of HIV/AIDS*, vol. two, *Family and Property Issues* (2009).

<sup>2</sup> See also ActionAid International, “Securing women's rights to land and livelihoods a key to ending hunger and fighting AIDS”, ActionAid International Briefing Paper (June 2008).

<sup>3</sup> UNDP, *Voices and Visions: The Asia Pacific Court of Women on HIV, Inheritance and Property Rights* (2008).

<sup>4</sup> Pradeep Panda and Bina Agarwal, “Marital violence, human development and women's property status in India”, *World Development*, vol. 33, No. 5 (2005).

<sup>5</sup> Organisation for Economic Co-operation and Development (OECD) Development Centre, “Gender equality and the MDGs: what are the missing dimensions?”, 2010, available from [www.oecd.org/dev/poverty/45987065.pdf](http://www.oecd.org/dev/poverty/45987065.pdf) (accessed 22 July 2013); and Netherlands, Ministry of Foreign Affairs, *Women's Economic Empowerment to Foster Food Security: Case Studies from Developing Countries* (2011).

guarantee women's equal property and inheritance rights.<sup>6</sup> According to UN Women, at least 115 countries specifically recognize women's property rights on equal terms with men.<sup>7</sup> Such progress has not been uniform.<sup>8</sup> Levels of legal protection are uneven and in many countries there are still significant gaps in the legal framework.

A major part of the remaining challenge revolves around implementation and enforcement. Even in countries where good laws exist, women frequently do not enjoy their rights to access and control productive resources. Implementation is too often hindered by sociocultural norms and women's lack of knowledge of their entitlements.<sup>9</sup>

There is no one-size-fits-all solution; but lessons have been learned. "Socioeconomic contexts determine the appropriateness of different types of rights to land and property – including individual rights, joint-titling and group rights. Continued efforts are needed to promote gender-sensitive legislation, enforce existing legislation, make judicial systems more accessible and responsive to women, and provide legal aid to women seeking to claim their rights."<sup>10</sup>

## LAND AND ITS INTERNATIONAL DIMENSIONS

Land demands particular attention. Land is key to a life with dignity and a basis for entitlements which can ensure an adequate standard of living and economic independence and, therefore, personal empowerment.<sup>11</sup> Regardless of whether a woman lives in a rural or urban setting, land rights also have major implications for the achievement and enjoyment of her human rights such

as the right to equality, food, health, housing, water, work and education.

Women's access to productive resources in general, and land in particular, cannot be divorced from the broader context of macroeconomic policy and the global economic system. Inclusive growth requires equal access to opportunities and resources for all segments of society, including for both women and men. The international community has an important role to play in fostering an international environment which recognizes and promotes women's land rights. Doing so, however, requires a departure from viewing land principally as a commodity. "... The prevailing discourse around land rights has assumed the form of individuating and commoditizing entitlements to land, where access and ownership are conceived in liberal market terms and land is narrowly understood as property."<sup>12</sup> This discourse is at odds with many traditional, collective and indigenous understandings of land rights, which view land not as a financial commodity to be privatized and sold, but as a life-sustaining resource to be shared and protected.

Throughout the world, market pressures on land are rapidly increasing, and land markets have often proven to be exclusionary and land concentration is on the rise. Research shows that over the past 10 years alone, at least 80 million hectares of land have been leased in large-scale land acquisitions – an area 20 times the size of the Netherlands.<sup>13</sup>

Within this context, it is reported that just 1 per cent of the world's women actually own land.<sup>14</sup> When researchers compiled an approximation of the distribution of land by gender (in this case in five Latin American countries), they found it to be "extremely unequal".<sup>15</sup>

Add to this the reality that, in an era of climate change, studies have pointed to increased desertification and a marked decrease in land suitable for farming.

6 World Bank, Food and Agriculture Organization of the United Nations (FAO) and International Fund for Agricultural Development (IFAD), *Agriculture and Rural Development: Gender in Agriculture – Sourcebook* (Washington, D.C., World Bank, 2009), module 4: Gender issues in land policy and administration.

7 UN Women, *Progress of the World's Women 2011–2012: In Pursuit of Justice* (2011).

8 Nayda Almodóvar-Regueis, Khrystyna Kushnir and Thibault Meilland, "Mapping the legal gender gap in using property and building credit", World Bank, Women, Business and the Law database. Available from <http://wbl.worldbank.org/> (accessed 12 June 2013).

9 2009 *World Survey on the Role of Women in Development: Women's Control over Economic Resources and Access to Financial Resources, including Microfinance* (United Nations publication, Sales No. E.09.IV.7).

10 Ibid.

11 FAO, *Land and Property Rights: Junior Farmer Field and Life School – Facilitator's Guide* (Rome, 2010).

12 Thea Gelbspan and Vijay K. Nagaraj, "Seeding hope? Land in the international human rights agenda: Challenges and prospects", Working Paper (International Network for Economic, Social and Cultural Rights (ESCR-Net), 2012).

13 Oxfam International, "Land grabs". Available from [www.oxfam.org/en/grow/issues/land-grabs](http://www.oxfam.org/en/grow/issues/land-grabs) (accessed 12 June 2013).

14 International Center for Research on Women (ICRW), "The issue: Women's assets and property". Available from [www.icrw.org/what-we-do/property-rights](http://www.icrw.org/what-we-do/property-rights) (accessed 12 June 2013).

15 United Nations Millennium Project, *Taking Action: Achieving Gender Equality and Empowering Women* (London, Earthscan, 2005).

Unpredictable rainfall and unseasonal temperatures already present a major challenge to many farmers, especially small landholders who have little capacity to adapt through technology or diversification. In Africa, the proportion of women negatively affected by climate-related crop changes is reportedly as high as 73 per cent in the Democratic Republic of the Congo and 48 per cent in Burkina Faso.<sup>16</sup>

Because of increasing land pressures around the world, the phenomenon of land-grabbing, and the ever increasing commodification of land, some scholars have noted that “the issue of women’s land rights is not only important today, it is likely to become increasingly so over time.”<sup>17</sup> All of these trends have dire implications,

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<sup>16</sup> International Union for Conservation of Nature (IUCN), *Training Manual on Gender and Climate Change* (2009).

<sup>17</sup> Bina Agarwal, “Gender and land rights revisited: Exploring new prospects via the State, family and market”, *Journal of Agrarian Change*, vol. 3, Nos. 1–2 (January and April 2003).

especially for women whose hold on land rights is already tenuous at best and who are the first to lose their claim on fertile soils.<sup>18</sup>

In order to ensure that women enjoy their rights in practice, a broad conceptualization of land rights and access to productive resources that is pro-poor, gender-inclusive and responsive to human rights is vital. This would be consistent with international human rights standards and with the human rights-based approach to development. Austerity measures currently being adopted in many countries should not roll back progress made on the advancement of these rights for women. States should prioritize investment in women and in these rights in order to see the greatest impact on sustainable development, in terms of both national expenditure and contributions to international aid.

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<sup>18</sup> Oxfam International, “Land grabs”.

# I. INTERNATIONAL AND REGIONAL LEGAL AND POLICY FRAMEWORK

## A. INTERNATIONAL LEGAL AND POLICY INSTRUMENTS

Lack of access to land and other productive resources has a negative impact on the enjoyment of various human rights for women. Furthermore, the violation of certain human rights, such as the right to information, participation, association, freedom from violence, and education, prevents women from accessing land and other productive resources.

International legal and policy instruments lay out a clear foundation for women's rights to land and other productive resources. These rights are guaranteed in various international human rights instruments, as detailed below. As underscored by various international human rights bodies and mechanisms, States have the obligation to respect (refrain from interfering with the enjoyment of the right), protect (prevent others from interfering with the enjoyment of the right) and fulfil (adopt appropriate measures towards the full realization of the right) human rights related to access, use and control over land and other productive resources. States are also required to ensure equal access to land, housing, property and other productive resources for both women and men.

### *1. International human rights instruments*

Various human rights instruments guarantee women's equal rights related to access, use and control over land.

The [Universal Declaration of Human Rights](#), in its article 2, sets the principle of non-discrimination, including based on sex, in the enjoyment of rights guaranteed in the Declaration. Among many other rights, the Declaration recognizes the rights to property, food, housing and education.

The [International Covenant on Civil and Political Rights](#), in its article 3, guarantees equality between women and men, and it prohibits discrimination based on sex, among other grounds, in its article 2. The Covenant also recognizes the rights to life, private and family life, liberty and security of person, equality before the courts and tribunals, information, freedom of movement, association, assembly and expression, freedom from torture and cruel, inhuman or degrading treatment, self-determination, equal protection of the law, participate in public affairs, and remedies.

Article 3 of the [International Covenant on Economic, Social and Cultural Rights](#) similarly calls on States parties to “undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant” and prohibits discrimination based on sex. The Covenant also recognizes the rights to food, housing, education, health, culture, work and association (trade unions).

The [Convention on the Elimination of All Forms of Discrimination against Women](#) calls on States parties to end discrimination against women in laws, policies and practices, including through the adoption of temporary special measures. Its article 2 obliges States

to “take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.” Its article 14.2 states that “States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development ....” This includes the right to education, access to credit and loans, access to housing and the right to participation. Importantly, it also includes guarantees of equal treatment in land and agrarian reform as well as in land resettlement schemes. Article 15.2 obliges States to accord women equal legal capacity in civil matters, in particular “equal rights to conclude contracts and to administer property”. Article 16 calls on States Parties to “take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations.” According to article 16.1 (h), States must ensure “the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.” The Convention also guarantees many other rights such as the rights to health or work.

The [Convention on the Rights of the Child](#), the [International Convention on the Elimination of All Forms of Racial Discrimination](#), the [Convention on the Rights of Persons with Disabilities](#) and the [International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families](#) also guarantee various rights related to access, use and control over land and other productive resources.

The bodies that monitor the implementation of the international human rights treaties, including the Committee on the Elimination of Discrimination against Women<sup>19</sup> and the Committee on Economic, Social and Cultural Rights,<sup>20</sup> frequently call on States parties to ensure women’s human rights related to access, use and control over land and other productive resources.<sup>21</sup>

In its general comment No. 19 (1990) on protection of

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<sup>19</sup> See also CEDAW/C/CIV/CO/1-3, CEDAW/C/NPL/CO/4-5, CEDAW/C/TCD/CO/1-4, CEDAW/C/ZMB/CO/5-6 and CEDAW/C/ETH/CO/6-7.

<sup>20</sup> See also E/C.12/BOL/CO/2, E/C.12/1/Add.93 and E/C.12/1/Add.66.

<sup>21</sup> See also articles 13, 14.2, 15.2 and 16.1 of the Convention on the Elimination of All Forms of Discrimination against Women, and article 11 of the International Covenant on Economic, Social and Cultural Rights.

the family, the right to marriage and equality of the spouses, the Human Rights Committee underscored that “during marriage, the spouses should have equal rights and responsibilities in the family. This equality extends to all matters arising from their relationship, such as choice of residence, running of the household, education of the children and administration of assets.”

In 1988, the Human Rights Committee also issued its views in *Avellanal v. Peru*. In that case, the petitioner challenged the application of article 168 of the Peruvian Civil Code, which stipulated that when a woman is married only her husband is entitled to represent their matrimonial property before the Courts. The Human Rights Committee found that this provision contravened Peru’s obligations under the International Covenant on Civil and Political Rights.<sup>22</sup>

In its general recommendation No. 21 (1994) on equality in marriage and family relations, the Committee on the Elimination of Discrimination against Women underscored that “the right to own, manage, enjoy and dispose of property is central to a woman’s right to enjoy financial independence, and in many countries will be critical to her ability to earn a livelihood and to provide adequate housing and nutrition for herself and for her family” (see also chap. III.D). It also stated that in countries undergoing agrarian reform or land redistribution “the right of women, regardless of marital status, to share such redistributed land on equal terms with men should be carefully observed.” The Committee remarked:

There are many countries where the law and practice concerning inheritance and property result in serious discrimination against women. As a result of this uneven treatment, women may receive a smaller share of the husband’s or father’s property at his death than would widowers and sons. In some instances, women are granted limited and controlled rights and receive income only from the deceased’s property. Often inheritance rights for widows do not reflect the principles of equal ownership of property acquired during marriage. Such provisions contravene the Convention and should be abolished (para. 35).<sup>23</sup>

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<sup>22</sup> Communication No. 202/1986, Views of 28 October 1988.

<sup>23</sup> See also paragraphs 7-8, 26-29 and 30-34, as well as its general recommendation No. 27 (2010) on older women and protection of their human rights, paras. 26, 34, 47-48 and 51-53.

The Committee has also specifically recognized that “in many States, including those where there is a community property regime, there is no legal requirement that a woman be consulted when property owned by the parties during marriage or de facto relationship is sold or otherwise disposed of. This limits woman’s ability to control disposition of the property and the income derived from it” (see also chap. III.D). The Committee has noted that discriminatory practices that prevent women from acquiring ownership of land are prohibited, for example, practices authorizing only the “head of household” to sign official documentation such as landownership certificates and receive pieces of land from the government. It has urged governments to abolish the concept of head of household in administrative practices and recognize joint or co-ownership of land, as well as to amend national legislation to ensure joint or co-ownership<sup>24</sup> (see also chap. III.D and chap. III.E.2).

In its general recommendation No. 29 (2013) on the economic consequences of marriage, family relations and their dissolution, the Committee on the Elimination of Discrimination against Women called on States parties to “provide for separating the principles and procedure dissolving the marriage relationship from those relating to the economic aspects of the dissolution. Free legal aid should be provided for women without the means to pay for court costs and attorney fees, so as to ensure that no woman is forced to forgo her economic rights to obtain a divorce” (para. 42). The Committee also reminded them that they are “obligated to provide, upon divorce and/or separation, for equality between the parties in the division of all property accumulated during the marriage. States parties should recognize the value of indirect, including non-financial contributions with regard to the acquisition of property acquired during the marriage”. They are also obliged to “adopt laws relating to the making of wills that provide equal rights to women and men as testators, heirs and beneficiaries.” Regarding intestate succession, the Committee also called on States parties to adopt laws that ensure, inter alia, the prohibition of disinheritance of the surviving spouse and the criminalization of property dispossession/grabbing.

In *Cecilia Kell v. Canada*,<sup>25</sup> the Committee on the Elimination of Discrimination against Women found that

<sup>24</sup> CEDAW/C/LKA/CO/7, paras. 38–39.

<sup>25</sup> Communication No. 19/2008, Views of 28 February 2012.

Canada had violated articles 2 (d) and (e) and 16.1 (h) read in conjunction with article 1 of the Convention by failing to prevent the eviction of an aboriginal woman from her house while she was seeking protection in a domestic violence shelter. The Committee recommended, inter alia, that Canada: compensate the victim and provide her with adequate housing; and recruit and train more aboriginal women to provide legal aid to women from their communities, including on domestic violence and property rights.

In its general comment No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights, the Committee on Economic, Social and Cultural Rights stated that “women have a right to own, use or otherwise control housing, land and property on an equal basis with men, and to access necessary resources to do so” (para. 28).<sup>26</sup> The Human Rights Committee, in its general comment No. 28 (2000) on equality of rights between men and women, has also stated that “the capacity of women to own property ... may not be restricted on the basis of marital status or any other discriminatory ground” and that States parties must ensure that the “matrimonial regime contains equal rights and obligations for both spouses with regard to ... the ownership or administration of property, whether common property or property in the sole ownership of either spouse” (see also chap. III.D).

The Committee on Economic, Social and Cultural Rights in its general comment No. 7 (1997) on the right to adequate housing: forced evictions highlighted the disproportionate impact of evictions on women, stating that “women in all groups are especially vulnerable given the extent of statutory and other forms of discrimination which often apply in relation to property rights (including homeownership) or rights of access to property or accommodation, and their particular vulnerability to acts of violence and sexual abuse when they are rendered homeless.”<sup>27</sup> Forced evictions can take place at the hands of public actors, as well as private ones, in both rural and urban contexts (see also chap. III.B).

<sup>26</sup> See also its general comment No. 7 (1997) on the right to adequate housing: forced evictions, para. 10.

<sup>27</sup> In the general comment, forced evictions are defined as “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.” In its resolution 1993/77, the Commission on Human Rights also affirmed “that the practice of forced eviction constitutes a gross violation of human rights, in particular the right to adequate housing”.

Forced evictions' dire implications for women have been well documented. For example, over the years, both the United Nations Special Rapporteur on violence against women and the United Nations Special Rapporteur on the right to adequate housing have specifically addressed women's experiences of violence within the context of forced eviction.

States are required to implement specific measures to prevent forced eviction, such as consultation with affected persons, including women, availability of remedies and compensation, and a series of procedural requirements. Each of these procedural protections applies to women and should consequently be seen in a gender-sensitive manner.<sup>28</sup>

Also the Committee on Economic, Social and Cultural Rights in its general comment No. 12 (1999) on the right to adequate food observed that availability in the context of the right to food "refers to the possibilities either for feeding oneself directly from productive land or other natural resources, or for well-functioning distribution, processing and market systems that can move food from the site of production to where it is needed in accordance with demand." This generic framework is equally applicable to women. The Committee specifically notes that national strategies to implement the right to food "should give particular attention to the need to prevent discrimination in access to food or resources for food. This should include: guarantees of full and equal access to economic resources, particularly for women, including the right to inheritance and the ownership of land and other property, credit, natural resources and appropriate technology; ... maintaining registries on rights in land (including forests)" (see also chap. III.E).

In its general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, the Committee states that "eliminating discrimination in practice requires paying sufficient attention to groups of individuals which suffer historical or persistent prejudice instead of merely comparing the formal treatment of individuals in similar situations. States parties must therefore immediately adopt the necessary measures to prevent, diminish and eliminate the conditions and attitudes which cause or perpetuate substantive or de facto discrimination. For example, ensuring

that all individuals have equal access to adequate housing, water and sanitation will help to overcome discrimination against women and girl children and persons living in informal settlements and rural areas." For indigenous women, this means addressing systemic forms of continuing discrimination related to States' dispossession of indigenous peoples' lands, territories and resources.

The **United Nations Declaration on the Rights of Indigenous Peoples** provides that indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired and that States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned. The Declaration also provides that indigenous women shall be protected from discrimination and that particular attention shall be paid to their rights and special needs.

The **Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169) of the International Labour Organization (ILO)** provides that "the rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognized." In addition, the principle of "free, prior and informed consent" provides that indigenous communities have the right to give or withhold consent to any proposed projects that may affect the lands they customarily use, own or occupy. This principle is acknowledged in several international human rights instruments, including the United Nations Declaration on the Rights of Indigenous Peoples.

## ***2. International policy instruments, principles, guidelines and recommendations***

In its **Platform for Action**, the Fourth World Conference on Women called on Governments to enable women to obtain affordable housing and access to land and to undertake legislative and administrative reforms to give women equal access to economic resources, including the right to inheritance and ownership of land and other

<sup>28</sup> *Women and the Right to Adequate Housing* (United Nations publication, Sales No. E.11.XIV.4), pp. 63–69.

property.<sup>29</sup> **The Habitat Agenda**, adopted at the second United Nations Conference on Human Settlements, committed Governments to providing legal security of tenure and equal access to land to all people, including women and those living in poverty, and undertaking legislative and administrative reforms to give women full and equal access to economic resources, including the right to inheritance and to ownership of land and other property.<sup>30</sup> **The International Conference on Population and Development** (Cairo, 1994) also called on Governments to promote and strengthen women's access to productive resources, their ability to own land and their right to inherit property.<sup>31</sup> More recently, at the United Nations Conference on Sustainable Development ("Rio+20"), Heads of State and Government resolved to "undertake legislative and administrative reforms to give women equal rights with men to economic resources, including access to ownership and control over land and other forms of property, credit, inheritance, natural resources and appropriate new technology."<sup>32</sup>

States are also called upon to support community projects, policies and programmes that aim to remove all barriers to women's access to affordable housing and property ownership; promote awareness campaigns, education and enabling practices regarding legal rights with respect to tenure, landownership and inheritance for women; and to promote mechanisms for the protection of women who risk losing their homes upon the death of their husbands.<sup>33</sup> In the **Plan of Action of the World Food Summit**, Governments pledge to "promote women's full and equal participation in the economy, and for this purpose introduce and enforce gender-sensitive legislation providing women with secure and equal access to and control over productive resources including credit, land and water."<sup>34</sup>

<sup>29</sup> *Report of the Fourth World Conference on Women, Beijing, 4–15 September 1995* (United Nations publication, Sales No. E.96.IV.13), chap. I, resolution 1, annex II, paras. 58 (m), 61 (b) and 165 (e).

<sup>30</sup> *Report of the United Nations Conference on Human Settlements (Habitat II), Istanbul, 3–14 June 1996* (United Nations publication, Sales No. E.97.IV.6), chap. I, resolution 1, annex II, para. 40 (b).

<sup>31</sup> *Report of the International Conference on Population and Development, Cairo, 5–13 September 1994* (United Nations publication, Sales No. E.95.XIII.18), chap. I, resolution 1, annex, para. 3.18.

<sup>32</sup> *Report of the United Nations Conference on Sustainable Development, Rio de Janeiro, Brazil, 20–22 June 2012* (A/CONF.216/16), chap. I, resolution I, annex, para. 240.

<sup>33</sup> *Report of the United Nations Conference on Human Settlements (Habitat II)*, chap. I, resolution 1, annex II, para. 78 (b), (e) and (g).

<sup>34</sup> *FAO, Report of the World Food Summit, Rome, 13–17 November 1996* (WFS 96/REP), part one, appendix, objective 1.3 (b).

The General Assembly and other intergovernmental bodies urge States to accord women full and equal rights to land and other property.<sup>35</sup> The special procedures of the Human Rights Council, in particular the Special Rapporteurs on adequate housing,<sup>36</sup> the right to food<sup>37</sup> and violence against women,<sup>38</sup> and the Representative of the Secretary-General on the human rights of internally displaced persons,<sup>39</sup> have highlighted the difficulties faced by women in accessing and controlling land and made recommendations to address those issues.

Housing, land and property are interconnected and often addressed together in many international human rights standards.<sup>40</sup> For example, the **Basic principles and guidelines on development-based evictions and displacement (2007)**,<sup>41</sup> developed by the then Special Rapporteur on adequate housing, Miloon Kothari, address the human rights implications of development-linked evictions and related displacement in rural and urban areas. They also include specific references to women's human rights and gender equality requirements. Among other things, they encouraged States to "adopt and implement special measures to protect women from forced eviction" as well as to take into account the differential impacts of forced evictions on women when conducting an impact assessment (see also chap. III.B).

The Special Rapporteur also highlighted "the gap between de jure and de facto protection of women's right to adequate housing. In many countries, women's rights are legally protected, but in practice, women are socially and economically disadvantaged and face de facto discrimination in the areas of housing, land and inheritance rights." In particular he noted that "gender-neutral laws were interpreted and implemented in ways that discriminate and disadvantage women."<sup>42</sup> In resolution 2005/25, the Commission on Human Rights recognized that "laws, policies, customs, traditions and

<sup>35</sup> See, for instance, General Assembly resolutions 66/216 and 52/93 and Commission on the Status of Women resolutions 42/1 and 49/8.

<sup>36</sup> See A/HRC/19/53, E/CN.4/2006/118, E/CN.4/2005/43, E/CN.4/2003/55 and E/CN.4/2002/59.

<sup>37</sup> See A/66/262, A/65/281, A/63/278 and A/HRC/9/23.

<sup>38</sup> See A/HRC/17/26, A/HRC/14/22, A/HRC/11/6, A/HRC/4/34 and E/CN.4/2005/72.

<sup>39</sup> See A/HRC/13/21/Add.4.

<sup>40</sup> See also *Women and the Right to Adequate Housing*.

<sup>41</sup> A/HRC/4/18, annex I.

<sup>42</sup> E/CN.4/2006/118, para. 9.

practices ... act to restrict women's equal access to credit and loans also prevent women from owning and inheriting land ...."<sup>43</sup>

With regard to security of tenure, in 2012 the Special Rapporteur on adequate housing highlighted that it "means a lot to families and individuals. It gives people certainty about what they can do with their land or home; and it offers them protection from encroachments by others. It often protects, increases and enables access to public services and benefits. It increases economic opportunities. It is a basis for women's economic empowerment and protection from violence."<sup>44</sup>

The Special Rapporteur on the right to food, Olivier De Schutter, articulated States' obligations to respect, protect and fulfil in the context of the right to food and land as "the right to food requires that States refrain from taking measures that may deprive individuals of access to productive resources on which they depend when they produce food for themselves (the obligation to respect), that they protect such access from encroachment by other private parties (the obligation to protect) and that they seek to strengthen people's access to and utilization of resources and means to ensure their livelihoods, including food security (the obligation to fulfil)." He also observed that "there remain laws and social customs such as those ensuring that the land of a deceased husband belongs to his sons, not to his widow, despite the flagrant violation of women's rights to which this leads" and "as a result, women still represent a significant minority of the total number of titleholders ...."<sup>45</sup> In "Large-scale land acquisitions and leases: A set of minimum principles and measures to address the human rights challenge" (2009), he recommended including sex-disaggregated data in impact assessments.<sup>46</sup>

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43 The Commission on Human Rights adopted resolutions 2000/13, 2001/34, 2003/22, 2004/21 and 2005/25 on women's equal ownership of, access to, and control over land, and the equal rights to own property and to adequate housing. The Sub-Commission on the Promotion and Protection of Human Rights adopted resolutions 1997/19 and 1998/15 on women and the right to land, property and adequate housing and 1999/15 on women and the right to development. The Commission on the Status of Women adopted resolution 42/1 on human rights and land rights discrimination. Finally, the Report of the Secretary-General on women's equal ownership of, access to and control over land and the equal rights to own property and to adequate housing (E/CN.4/2002/53) contains information submitted by countries and institutions relevant to land.

44 A/HRC/22/46, para. 16.

45 A/65/281, paras. 2 and 31.

46 A/HRC/13/33/Add.2.

In his report on women's rights and the right to food, the Special Rapporteur discussed the threats to women's right to food, identifying the areas that demand the most urgent attention, such as ensuring women's access to productive resources. He reviewed the main obstacles that women face in accessing land, extension services and credit. He also noted that "in order to make a stronger contribution to poverty alleviation and to women's empowerment, agriculture research and development could take into account the specific constraints faced by women and their preferences." Finally, he highlighted the importance of involving women in the design, implementation and assessment of all policies.<sup>47</sup>

The **Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security**, adopted by the FAO Council in 2004, also refer explicitly to land in the context of the right to food. In particular, guideline 8 (access to resources and assets) encourages States to "respect and protect the rights of individuals with respect to resources such as land, ... without discrimination" and, where necessary and appropriate, to "carry out land reforms and other policy reforms consistent with their human rights obligations and in accordance with the rule of law in order to secure efficient and equitable access to land ...." It also provides that "States should take measures to promote and protect the security of land tenure, especially with respect to women, and poor and disadvantaged segments of society, through legislation that protects the full and equal right to own land and other property, including the right to inherit."

States adopted the **Voluntary Guidelines on the Responsible Governance of Tenure of Lands, Fisheries and Forests in the Context of National Food Security**, under the auspices of the FAO Committee on World Food Security, in May 2012. They are the first guidance on the governance of land negotiated by States internationally. They reiterate the principle of gender equality, calling upon States to "ensure that women and girls have equal tenure rights and access to land, fisheries and forests independent of their civil and marital status" and provide guidance on various aspects of the governance of tenure with reference to the principle of gender equality.

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47 A/HRC/22/50.

On indigenous women specifically, they provide that “indigenous peoples and other communities with customary tenure systems that exercise self-governance of land, fisheries and forests should promote and provide equitable, secure and sustainable rights to those resources, with special attention to the provision of equitable access for women. Effective participation of all members, men, women and youth, in decisions regarding their tenure systems should be promoted through their local or traditional institutions, including in the case of collective tenure systems” (see also chap. III.H.1).

As a follow-up to the Voluntary Guidelines, a technical guide aims to assist the implementation of their principle of gender equality through the achievement of responsible gender-equitable governance of land tenure.<sup>48</sup>

The *Guiding Principles on Internal Displacement* (1998) address the specific needs of internally displaced persons and include provisions on women’s rights related to land and other productive resources. Among other things, the Guiding Principles provide that “the authorities concerned shall endeavour to involve those affected, particularly women, in the planning and management of their relocation”<sup>49</sup> (see also chap. III.H.3).

The 2005 *Principles on housing and property restitution for refugees and displaced persons* (“the Pinheiro Principles”), endorsed by the United Nations Sub-Commission on the Promotion and Protection of Human Rights, are designed to protect the rights of refugees and displaced persons and recognize the principle of gender equality. They encourage States, among other things, to “ensure the equal right of men and women, and the equal right of boys and girls, inter alia, to voluntary return in safety and dignity, legal security of tenure, property ownership, equal access to inheritance, as well as the use, control of and access to housing, land and property”<sup>50</sup> (see also chap. III.H.3).

On HIV, the *International Guidelines on HIV/AIDS and Human Rights* provide that “anti-discrimination and protective laws should be enacted to reduce human

rights violations against women in the context of HIV, so as to reduce vulnerability of women to infection by HIV and to the impact of HIV and AIDS. More particularly, laws should be reviewed and reformed to ensure equality of women regarding property and marital relations and access to employment and economic opportunity, so that discriminatory limitations are removed on rights to own and inherit property, enter into contracts and marriage, obtain credit and finance, initiate separation or divorce, equitably share assets upon divorce or separation, and retain custody of children”<sup>51</sup> (see also chap. III.H.2).

## B. REGIONAL LEGAL AND POLICY FRAMEWORKS

Several provisions of the *Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa* address women’s land and property rights. State parties are required to ensure that in the event of separation, divorce or annulment of marriage, women and men shall have the right to an equitable sharing of the joint property deriving from the marriage; grant to women, whatever their marital status, access to adequate housing; promote women’s access to and control over productive resources such as land; and guarantee their right to property (arts. 7, 16 and 19). The Protocol also provides that a widow has the right to an equitable share in the inheritance of the property of her husband, and that women and men have the right to inherit, in equitable shares, their parents’ properties (art. 21). In addition, the Protocol requires that State parties “take appropriate measures to ... provide women with access to clean drinking water, sources of domestic fuel, land, and the means of producing nutritious food” in the context of women’s right to food security (art. 15). The *Framework and Guidelines on Land Policy in Africa*, adopted by the African Union in 2009, contains a specific section on strengthening the land rights of women.<sup>52</sup>

<sup>48</sup> FAO, *Governing Land for Women and Men: A Technical Guide to Support the Achievement of Gender-equitable Governance of Land Tenure, Governance of Tenure Technical Guide No. 1* (Rome, 2013). Available from [www.fao.org/docrep/017/i3114e/i3114e.pdf](http://www.fao.org/docrep/017/i3114e/i3114e.pdf) (accessed 19 June 2013).

<sup>49</sup> E/CN.4/1998/53/Add.2.

<sup>50</sup> E/CN.4/Sub.2/2005/17, principle 4.

<sup>51</sup> *International Guidelines on HIV/AIDS and Human Rights: 2006 Consolidated Version* (United Nations publication, Sales No. E.06.XIV.4).

<sup>52</sup> The Land Policy Initiative (a joint programme of the tripartite consortium constituted by the African Union Commission, the United Nations Economic Commission for Africa and the African Development Bank) is now moving towards assisting African Union member States in developing or reviewing their land policies as well as in implementing and evaluating these policies.

The [Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights](#) also recognize the principle of gender equality and women's equal rights to property and land. Among other provisions, they state that the African States are obliged to "ensure equitable and non-discriminatory access, acquisition, ownership, inheritance and control of land and housing, especially by women. This includes the obligation to take measures to modify or prohibit harmful social, cultural or other practices that prevent women and other members of vulnerable and disadvantaged groups from enjoying their right to property, particularly in relation to housing and land" (para. 55 (viii)).

Through the [African Union's Declaration on Land Issues and Challenges in Africa](#), African States have resolved to "strengthen security of land tenure for women [who] require special attention."<sup>53</sup> The [Nairobi Action Plan on Large Scale Land-Based Investments in Africa](#)<sup>54</sup> also embraces the promotion of "alternative land based investment models" and underscores the importance of "maximiz[ing] opportunities for Africa's farmers, with special attention to smallholders [NB the majority of whom are women] and minimiz[ing] the potential negative impacts of large-scale land acquisitions, such as land dispossession and environmental degradation, in order to achieve an equitable and sustainable agricultural and economic transformation that will ensure food security and development."

In Europe, article 1 of [Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms](#) states that "every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law." Article 14 of the Convention sets out the principle of non-discrimination on any ground "such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The [Recommendation of the Commissioner for Human Rights of the Council of Europe on the implementation](#)

[of the right to housing](#) of 30 June 2009 states that "equal access to credit and finance, equal rights in respect of inheritance of land and property and the elimination of gender-biased customs and traditions that hinder women's enjoyment of housing rights are critical issues. Laws and policies must be articulated and implemented in ways that recognise the specific constraints and vulnerabilities of women in relation to the right to housing." The Recommendation also calls upon States to "ensure that domestic violence laws include provisions to protect women's right to housing, including the right to privacy and security."<sup>55</sup>

Article 17 of the [Charter of Fundamental Rights of the European Union](#) provides that "everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss". The prohibition of discrimination "based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation" is stated in article 21.

Article 31 of the [Arab Charter on Human Rights](#) states that "everyone has a guaranteed right to own private property, and shall not under any circumstances be arbitrarily or unlawfully divested of all or any part of his property." According to article 3, each State "undertakes to ensure to all individuals subject to its jurisdiction the right to enjoy the rights and freedoms set forth herein, without distinction on grounds of race, colour, sex, language, religious belief, opinion, thought, national or social origin, wealth, birth or physical or mental disability" and "pledges to take all the requisite measure to guarantee equal opportunities and effective equality between men and women ...".

In [consensus documents adopted by the Regional Conference on Women in Latin America and the Caribbean](#), States agreed to formulate and implement public policies to broaden sustainable access for women to landownership and access to water, other natural and productive resources, services, financing and

53 Assembly/AU/Decl.1(XIII) Rev.1.

54 Adopted at the High Level Forum on Foreign Direct Investments in Land in Africa, Nairobi, 4–5 October 2011.

55 CommDH(2009)5, sects. 4.3.6 and 5 (6). See also Council of Europe Convention on preventing and combating violence against women and domestic violence.

technologies;<sup>56</sup> ensure women's access to productive assets, including land and natural resources, and access to productive credit, in both urban and rural areas;<sup>57</sup> and adopt an approach of gender, race and ethnic equality and the corresponding measures in relation to economic, fiscal and tax policy, agrarian reform, and access to ownership of land, housing and other productive assets, in order to ensure the equitable distribution of wealth.<sup>58</sup>

In *The Work, Education and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights*, the **Inter-American Commission on Human Rights** sets out a number of priority measures that States should take to ensure women's equal access to and control over economic and financial resources, including land, property and housing, such as adopting legislative measures and creating the conditions that will enable women to have full access to and control over their economic resources, unencumbered by any form of discrimination; reviewing any laws and policies that might have a discriminatory impact on women's access

to and control over economic resources – both within and outside of marriage; and guaranteeing adequate and effective judicial remedies to enable women to report violations of their right of access to and control over economic resources.<sup>59</sup>

In *Maria Eugenia Morales de Sierra v. Guatemala*, the Inter-American Commission on Human Rights dealt with the property rights of married women. In that case, the petitioner challenged the Guatemalan Civil Code, which conferred the power to represent the marital union upon the husband and empowered the husband to administer marital property. The Commission found those provisions to be in contravention of the obligations of Guatemala under the American Convention on Human Rights.<sup>60</sup>

The list of international and regional legal and policy instruments presented in this chapter is not exhaustive but aims to offer a general view of the legal and policy environment regarding women's rights to land.

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56 Quito Consensus, tenth session of the Regional Conference.

57 Brasilia Consensus, eleventh session of the Regional Conference.

58 Ibid.

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59 OEA/Ser.L/V/II.143 Doc. 59, para. 331.

60 Report No. 4/01, case 11.625.

## II. A HUMAN RIGHTS-BASED APPROACH TO WOMEN'S RIGHTS TO LAND AND OTHER PRODUCTIVE RESOURCES

In order to create effective solutions which work for women, embracing a human rights-based approach as an overarching framework is key. A human rights-based approach is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights.<sup>61</sup> Solutions must reflect international human rights standards, take due consideration of the specific needs of women, promote women's rights, ensure that women are able to meaningfully participate at all stages, guarantee that women are empowered to know and claim their rights, and provide for accountability and access to remedies in cases where rights may have been violated.<sup>62</sup> A human rights-based approach has been taken in the formulation of the recommendations contained in this publication, which are also informed by good practices to secure women's rights to land and other productive resources.

Under a human rights-based approach, the plans, policies and processes of development are anchored in a system of rights and corresponding obligations established by international law. This approach should also be applied to laws and regulations related to development issues. This approach helps to promote the sustainability of development work, empowering people, especially the

most vulnerable and marginalized, to participate in policy formulation and hold accountable those who have a duty to act. People are accordingly recognized as key actors in their own development, rather than passive recipients of commodities and services.

This approach helps to identify rights-holders and their entitlements and corresponding duty-bearers and their obligations. It promotes strengthening the capacities of rights-holders to make their claims and of duty-bearers to meet their obligations. Under such an approach to development, the main objective while developing laws, policies and programmes should be the fulfilment of human rights. Legislation, policies and programmes should also address practices and traditions that discriminate against individuals, in particular women.

Principles and standards derived from international human rights instruments should guide the legislation and policy processes as well as the programming in all sectors, including land and other productive resources, and in all phases of the programming process: assessment and analysis, programme planning and design (including setting of goals, objectives and strategies), budgeting and financing, implementation, monitoring (including the use of indicators) and evaluation.<sup>63</sup>

Some of the human rights principles and standards relevant to women's access to, use of and control over

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<sup>61</sup> The general information on the human rights-based approach concept and on some of the principles contained in this publication is based on OHCHR, *Frequently Asked Questions on a Human Rights-based Approach to Development Cooperation* (2006).

<sup>62</sup> See also United Nations Development Group, "The human rights-based approach to development cooperation: towards a common understanding among the United Nations agencies" (ibid., annex II).

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<sup>63</sup> For more information on the use of indicators see *Human Rights Indicators: A Guide to Measurement and Implementation* (United Nations publication, Sales No. 13.XIV.2).

land and other productive resources are:<sup>64</sup> universality and inalienability; indivisibility; interdependence and interrelatedness; equality and non-discrimination; participation and inclusion; accountability and rule of law; transparency; empowerment, sustainability, international cooperation and due diligence.

### **Universality and inalienability**

Human rights, including those related to access, use and control over land, are universal and inalienable. As stated in article 1 of the Universal Declaration of Human Rights, “all human beings are born free and equal in dignity and rights.” All people everywhere in the world are entitled to them. The human person to whom they belong cannot voluntarily give them up. Nor can others take them away from her or him.

### **Indivisibility**

Human rights are indivisible. Whether of a civil, cultural, economic, political or social nature, they are all inherent in the dignity of every human person. Consequently, they all have equal status as rights, and cannot be ranked in a hierarchical order. This applies also to women’s human rights related to access, use and control over land.

### **Interdependence and interrelatedness**

The realization of one right often depends, wholly or in part, upon the realization of other human rights. For instance, women’s rights related to access to, control over and use of land, including rights to food, housing and property, are integrally related to women’s right to full equality under the law, which requires that women have legal capacity to own, administer and manage property, as well as women’s right to a life free from violence.

### **Equality and non-discrimination**

All individuals are equal and are entitled to their human rights relevant to access, use and control over land without discrimination of any kind, such as race, colour, sex, ethnicity, age, language, religion, political or other opinion, national or social origin, disability, property, birth or other status as explained by the human rights treaty bodies.

<sup>64</sup> The following principles were included in the human rights-based approach to development cooperation: towards a common understanding among the United Nations agencies: universality and inalienability; indivisibility; interdependence and interrelatedness; equality and non-discrimination; participation and inclusion; accountability and rule of law.

States must adopt all appropriate measures to eliminate discrimination against women in access, use and control over land and other productive resources; this includes also the adoption of temporary special measures.<sup>65</sup> Both formal (de jure) and substantive (de facto) discrimination should be eliminated. Eliminating formal discrimination requires ensuring that a State’s constitution, laws and policy documents do not discriminate on prohibited grounds. For example, laws should protect women’s equal rights to own, inherit and administer property and land. Eliminating discrimination in practice requires more than a law stating that women have equal rights to own, inherit and administer property. Practices, customs and traditions that discriminate against women should also be eliminated and special measures may be required to enable women to claim these rights. States have also to properly tackle the intersectional or multiple discrimination suffered by many women – for example elderly women, women with disabilities, women living with or affected by HIV, indigenous women, refugee or displaced women, or women belonging to minority communities (see also chap. III.H and chap. III.A.2).

### **Participation and inclusion**

Every person is entitled to active, free and meaningful participation in, contribution to, and enjoyment of civil, economic, social, cultural and political development for the realization of human rights.

The principles of participation and inclusion have to be considered in all phases of the legislation, policy and programming processes: assessment and analysis, programme planning and design, budgeting and financing, implementation, monitoring and evaluation. Access to information, as well as meaningful consultation and participation in decision-making instances, relevant to access, use and control over land, should be equally guaranteed for both women and men (see also chap. III.A.1).

### **Accountability and rule of law**

States and other duty-bearers are answerable for the observance of women’s human rights related to access, use and control over land and other productive resources. In this regard, they have to comply with the legal norms and standards enshrined in human rights instruments. Where they fail to do so, aggrieved rights-

<sup>65</sup> Convention on the Elimination of All Forms of Discrimination against Women, art. 4.

holders should be able to institute proceedings for appropriate redress before a competent court or other adjudicator in accordance with the rules and procedures provided by law.

States should establish appropriate monitoring mechanisms and provide effective remedies as a matter of priority to properly comply with their obligations of respecting and protecting human rights relevant to access, use and control over land (see also chap. III.C).

### **Transparency**

States are obliged to implement decision-making processes in a transparent manner. Transparency means that information is freely available and directly accessible to those who will be affected by such decisions and their enforcement. It also means that enough information is provided and that it is provided in easily understandable forms.

Transparency in the formulation and implementation of public policies empowers the public to access social services, participate in the formulation of policies and demand protection of their rights.<sup>66</sup> Facilitating women's access to information is a powerful strategy in protecting their human rights related to access, use and control over land and other productive resources.

### **Empowerment**

A human rights-based approach is premised upon empowering women and men to claim their rights. States are obliged to undertake all necessary measures to empower women so that their human rights relevant to access, use and control over land and other productive resources are realized on an equal basis with men.

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<sup>66</sup> *Good Governance Practices for the Protection of Human Rights* (United Nations publication, Sales No. E.07.XIV.10), p. 5.

Access to education, information and decision-making processes are key to women's empowerment (see also chap. III.G).

### **Sustainability**

States should design laws, policies and programmes relevant to access, use and control over land that sustainably ensure the equal enjoyment of human rights by women. Sustainability implies that infrastructure and mechanisms critical to the realization of human rights are resourced and maintained. With respect to land, sustainability is also integrally related to environmental protection.

### **International cooperation**

States are obliged to use maximum available resources for the progressive realization of rights relevant to the access, use and control over land and other productive resources. This includes the use of resources from international cooperation. Development assistance should also contribute to the realization of human rights.

### **Due diligence standard**

States' obligation to protect human rights means that they should prevent others from interfering with the enjoyment of the right. States should protect both women and men against interference by non-governmental actors – in particular land companies (including transnational companies), armed groups, traditional leaders, family and communities – with human rights relevant to access, use and control over land. States should undertake all measures with due diligence to prevent human rights violations, protect the victims,<sup>67</sup> as well as prosecute and punish the perpetrators of those violations.

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<sup>67</sup> Protection programmes should take into account the specific threats that women receive.

# III. GOOD PRACTICES TO REALIZE WOMEN'S RIGHTS TO LAND AND OTHER PRODUCTIVE RESOURCES

## A. OVERARCHING ISSUES AND PRACTICES

### 1. *Ensure meaningful participation of women in decision-making*

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#### RECOMMENDATION

Laws, policies and programmes should:

- Provide for the full participation of women, based on their informed, active, meaningful and effective engagement in the formulation of laws, policies and programmes.
  - Ensure that women and women's rights groups/collectives are effectively represented on equal terms with men in all decision-making structures relevant to land and agriculture, including in mechanisms that have a voting function.
  - Ensure that women and women's rights groups/collectives have full and accurate information about decision-making processes relevant to land and agriculture, and are able to benefit from capacity-building in this regard in order to ensure that their participation in decision-making is informed, active, meaningful and effective.
  - Include temporary special measures where needed to ensure the meaningful participation of women in decision-making processes relevant to land and agriculture.
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#### *Commentary*

The right of women to active, meaningful and effective participation in legal and policy development is not only crucial to ensuring good policy; it is also an essential component of the human rights-based approach. In order for participation to be active, meaningful and effective, it must first and foremost be free and informed, and decision-making bodies must be accessible to women. Participation also broadly entails both direct participation in decision-making as well as effective and fair representation of women's interests

and rights in decision-making bodies and institutions. The right to participation applies to all stages of law, policy and programme development, including assessment and analysis, programme planning and design, budgeting and financing, implementation, monitoring and evaluation.

Women's participation has successfully influenced and benefited land policy processes in many contexts. In Botswana, the Ministry of Agriculture initiated

the development of the *Agricultural Sector Gender Policy Framework* in 2003 to address the needs of women so that they could more effectively participate in agriculture. The goal of the Framework was to “promote gender equality and equity in all agricultural development processes to ensure the creation of employment, reduction of poverty and achievement of household and national food security.”<sup>68</sup> This Framework was approved at the ministerial level in July 2007 as a guiding document for all processes and procedures in the agricultural sector.

In Uganda, the process leading up to the adoption of the *Uganda National Land Policy (Final Draft)* in March 2011, was hailed as a benchmark for high levels of collaboration between the Government and civil society. From the start, the multi-sectoral and multidisciplinary National Land Policy Working Group included women’s rights groups and activists. This greatly aided the agenda-setting by clearly articulating the critical women’s issues that needed to be dealt with at policy level. It also ensured consistent vetting of content to determine whether it was supportive of women’s land rights.

Temporary special measures can also be directed towards the achievement of de facto or substantive equality of women with men in the enjoyment of their land rights. Under the Ugandan *Land Act* of 1998, specific provisions ensure women’s representation in the Uganda Land Commission, in district land boards and in parish-level land committees. In Namibia, the *National Agricultural Policy* of 1995 highlights the need to secure the participation of women in agricultural development and provides for women to be recognized as farmers in their own right. Namibia’s *Communal Land Reform Act* of 2002 also guarantees minimum representation for women on community land management bodies and is applicable to areas under customary law. Mexico’s 1971 Agrarian Law granted women the same land rights as men, and consequently they were granted a voice and vote in domestic decision-making bodies. Cambodia’s Land Administration, Management and

Distribution Programme recognizes that women are underrepresented in all institutions related to land and seeks to ensure that cadastral commissions include at least 30 per cent women.<sup>69</sup> The United Republic of Tanzania’s *Land Act* of 1999 requires a “fair balance” of men and women to be ensured in the appointment of the National Land Advisory Council. In Zambia, the *draft national land administration and management policy* seeks to implement at least 30 per cent landownership for women. In Uganda, the affirmative representation quotas have been effective in bringing higher numbers of women into decision-making positions at both policy and legislative level and in professional organizations, including the land management and administration institutions.

Care must be taken to ensure that women’s representation is meaningful. In addition to setting up avenues which encourage and ensure participation, it should also be borne in mind that women must benefit from the necessary support in order to engage effectively, including developing the technical and substantive expertise needed to shape policy. As the International Fund for Agricultural Development (IFAD) has recognized “in all instances, training women on their rights has proved extremely useful as it increases their awareness of the claims they can make and provides opportunities for enhancing their political capital and their participation in the policy process.”<sup>70</sup>

To make participation meaningful, women must have access to information and training so as to prepare them for engagement in participatory processes on land-related law, policy and programming. Effective engagement also implies that the participatory processes themselves must be accessible and gender-sensitive (see also case study 1 on Brazil and case study 6 on Rwanda). Quotas meant to support women’s participation must also be adequately enforced.

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68 FAO, Gender and Land Rights database. Available from [www.fao.org/gender/landrights/report/en/](http://www.fao.org/gender/landrights/report/en/) (accessed 23 July 2013).

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69 Ibid.

70 IFAD, “Enhancing the role of indigenous women in sustainable development: IFAD experience with indigenous women in Latin America and Asia”, 2004.

# CASE STUDY 1

## PARTICIPATION IN PRACTICE: LESSONS LEARNED FROM PONTE DO MADURO (RECIFE, BRAZIL)

Recife, the State capital of Pernambuco, is the second largest city of northeastern Brazil and it is a city in which poverty is widespread. Afro-Brazilian women represent the poorest and are the majority of those living in poverty. Informal settlements cover vast areas of the city.

Ponte do Maduro is an informal settlement located in central Recife. It includes four communities: Chié, Santa Teresinha, Ilha de Joaneiro and Santo Amaro. Here, some 9,000 families registered by Companhia Estadual de Habitação e Obras live in an area occupied by poor families for a century, initially by fishermen and women. For many decades this area was wetland, but over the years and due to city development it has become attractive to developers and a battleground for residents who claim their right to remain.

Over the past two years, a group of 50 women residents from these four communities has struggled for their right to promised land titles through a State-led land regularization process. With the support of Espaço Feminista and other partners, women and community leaders are building their capacity and claiming space in the land regularization, making policymakers understand the real meaning of gender equality and women's empowerment.

In the case of Ponte do Maduro's regularization, a permanent committee was set up (with at least 50 per cent female representation) to plan and monitor the entire process and serves as a space for dialogue around issues that arise during the process, but also a space to address and face many disputes. The committee comprises different institutions and community leaders. Together, they are monitoring the regularization through regular meetings.

In these meetings many women residents who are in leadership positions are participating, including women leaders who are not formally part of that committee, and acting collectively to make visible their demands, demonstrating their capacity both to understand the technicalities of the process and to act on knowledge from their own communities.

Some of the most important outcomes from the process that Espaço Feminista is facilitating are:

- The recognition that community leaders, and especially women leaders, are the ones who know their communities best and are, therefore, best placed to effectively and practically contribute to the design and implementation of public policy;
- Community leaders are proving that they can and should be more than just beneficiaries, and play roles that are more than mere support to land specialists; rather, they are proving they themselves are specialists in finding solutions for their own communities and solving disputes among residents;
- Finally, all partners and women's groups are learning from the process that it is possible and beneficial for all to create a dialogue between different stakeholders and sectors in a horizontal process of knowledge-sharing in which differences are not just recognized, but also respected.

*Source:* Patricia Chaves, Espaço Feminista, Brazil.

## 2. Combat intersectional and multiple forms of discrimination

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### RECOMMENDATION

#### Laws, policies and programmes should:

- Prohibit discrimination against women in relation to access, use and control over land and other productive resources on the basis of inter alia gender/sex, race/ethnicity, indigenous identity, colour, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, age, nationality, marital and family status, sexual orientation and gender identity, health status, place of residence, economic and social situation or other status, such as women engaged in sex work or victims of domestic violence.
  - Ensure that women from marginalized groups, such as indigenous women, women living with or affected by HIV, women with disabilities and minority women, have equal access to land and other productive resources as other women.
  - Ensure that the situation of particularly marginalized or excluded women is adequately addressed through specialized programming and outreach, and through the adoption of temporary special measures. To this end, there should be a bottom-up assessment, informed by grass-roots perspectives, to identify who is marginalized with respect to access to, use of and control over land, and to develop specific protection measures for them – including temporary special measures.
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### Commentary

Effective laws, policy and programming in the area of women's access to productive resources and land must reflect the fact that women are not a monolithic group and embrace women's inherent diversity. They should also reflect the fact that women may be differentially impacted by intersectional and multiple forms of discrimination. In particular, when it comes to issues of land, women are differentially impacted by discrimination related to marital status, economic status, widowhood, abandonment, racial/ethnic identity, health status, disability, age, sexual orientation, displacement, or other status, such as women engaged in sex work or victims of domestic violence. For example, single, widowed or "abandoned" women may be shunned by their communities and unable to access land. Victims of domestic violence may be trapped when their access to land and other productive resources is contingent on their relationship with their violent partner. Women with disabilities may be excluded from decision-making around land and other productive resources, rendering their needs invisible.

Each of these groups of women encounters different barriers with respect to their ability to access, use and control land and other productive resources, and each must be considered within the scope of policy and programme development, including in assessment and

analysis, programme planning and design, budgeting and financing, implementation, monitoring and evaluation. Some of the specific issues and particular groups of women noted above (namely indigenous women, women affected by HIV and displaced women) are also addressed in more detail in section H below.

Many women are almost completely dependent on their relationship with a man (be it a father, husband, uncle or son) to access land, making it difficult if not impossible for them to access, use and control land in their own right. It is especially important that laws, policies and programmes related to land and other productive resources should be sensitive to these issues, and ensure that women are able to access these resources regardless of their personal or marital status.

Single women in particular face serious challenges and are an invisible population in some countries. In India, single women have organized across the country, resulting in the formation of the National Forum for Single Women's Rights. The National Forum has advocated for the rights of single women to enjoy their land and property rights with respect to both their natal and marital homes, and have advocated that single women should be allotted land to build a house.<sup>71</sup>

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<sup>71</sup> Swapna Majumdar, "India's single women resist stigma, demand rights", *Women's eNews*, 10 January 2010.

Some national policies address intersectional and multiple discrimination. The *Uganda National Land Policy (Final Draft)* recognizes the land rights of women, children, ethnic minorities, pastoral communities, dwellers in informal settlements and slums, as well as other vulnerable groups, including persons living with or affected by HIV, persons with disabilities, and internally displaced persons. In Sri Lanka, the North East

Housing Reconstruction Programme helped finance the reconstruction of houses damaged by the war. Priority was given to female heads of households in the application process. Similarly, the *National Land Policy* of Kenya (2009) requires special interventions to be undertaken to deal with the intersectional issues related to poverty, HIV and gender. It also recognizes the land rights of children and youth (see also case study 2 on Namibia).

### 3. Harmonize national laws, policies and programmes

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## RECOMMENDATION

### Laws, policies and programmes should:

- Be effectively consolidated and harmonized so that there are consistent and coherent legal and policy frameworks protecting women's rights to land and other productive resources.
  - Ensure that new legislation provides for the amendment and/or removal of provisions contained in other areas of law, such as civil codes, personal status, family and marriage law, property law, housing and/or land law, that contradict the legislation adopted, so as to ensure a consistent legal framework that promotes women's human rights and gender equality.
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### Commentary

Women's rights to access, use and control land and other productive resources are best protected when laws and policies pertaining to these rights are harmonized and comprehensive.

Most women gain access to productive resources primarily within the context of marriage and the family, and within the context of inheritance. To a lesser extent, women may also gain access through government or other social programmes (for example, via land reform), or through access to markets. This means that many types of laws will be relevant to the protection of women's land rights, including marriage and family law (which addresses issues of marital property, inheritance and divorce) as well as land law (which may address issues of land reform), and personal status law and property law. All such laws should be reviewed and/or amended as needed in order to ensure the greatest protection of these rights, in conformity with international human rights standards.

It is important to ensure that legal and policy standards are harmonized, so that women's rights are consistently protected. Such harmonization is important to ensure that any gaps in legal frameworks

or legal protections are appropriately filled and that existing laws and policies do not discriminate against women or otherwise prejudice their situation owing to either conflict or incoherence. In addition to ensuring the harmonization of existing laws and policies, States should also ensure that new laws and policies provide for the amendment and/or removal of provisions contained in other areas of law and policy (such as civil codes, family and marriage law, property law, land law and policy) that contradict any new law and policy, so as to ensure a consistent framework that promotes women's human rights and gender equality.

An example from Uganda shows why such harmonization is important: strategic litigation pertaining to its *Divorce Act* and its *Succession Act* nullified sections of the law for the realization of land rights for vulnerable groups, especially women and children.<sup>72</sup> However, it became clear that unless simultaneous changes were effected in both family law and property law, the protection of women's rights

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<sup>72</sup> Constitutional Petition No. 2 of 2003: *Uganda Association of Women Lawyers & Others v. Attorney General* (Divorce Act Petition); Constitutional Petitions Nos. 13/05 & 05/06: *Law and Advocacy for Women in Uganda v. Attorney General* (Succession Law Petition).

# CASE STUDY 2

## THE IMPORTANCE OF ENSURING THE RIGHTS OF YOUNG WOMEN UNDER NAMIBIA'S COMMUNAL LAND REFORM ACT

In Namibia, much of the rural population lives on communal land owned by the State and customarily allocated to members of the community by traditional leaders. Under pre-independence customary law, women's access to land was primarily through their husbands, fathers or some other male relative. Under the *Communal Land Reform Act* of 2002, there are no bars to gender equality in the allocation of communal land – but there is no direct articulation of the principle of non-discrimination, nor any affirmative action for women. Land continues to be allocated by traditional leaders, with the allocations being ratified by community land boards, about one third of whose members should be women.

In 2007, four years after the new law came into force, some traditional leaders interviewed by the Legal Assistance Centre reported a rising trend in applications for land from single women – mainly women over the age of 50. While these women were applying for and receiving land, younger women were unaware of their rights and faced unique challenges. Some traditional leaders interviewed for this study expressed reluctance to allocate communal land to young, single women. Young women do not traditionally have their own households, usually remaining in their parents' homesteads until they marry. Traditional leaders cited worries that allowing young, single women to establish their own homesteads might encourage violence or prostitution as lots of single men would be likely to visit them, and that this would contradict parental responsibilities to care for such women. Some traditional leaders apparently refused to allocate land to single women on such grounds, despite the law's gender-neutral provisions. Ironically, this study found that the overriding reason cited for the increased ability of single women to obtain land was not the new law, but the fact that women increasingly have the financial means to “persuade” village sub-headmen to allocate land to them.

Similarly, a recent study of 10 villages under the jurisdiction of a single community land board found that 40 per cent of the applications for land rights originated from single, widowed or divorced women, with the average age of the female applicants being about 60. Younger women in the study area were aware of their right to register for independent communal land rights, but were discouraged from doing so by cultural and socioeconomic barriers. However, the study noted that both the community land board and the local traditional authority in this particular location were actively encouraging women to apply for land rights.

To remedy the situation, affirmative action measures should be formalized in legislation, in this case to assist in changing prevailing attitudes about land allocation to young, single women. Supportive organizations could encourage women to exercise the option of registering individual land rights, even if this constitutes a break with tradition.

*Source:* Dianne Hubbard, Legal Assistance Centre, Namibia.

to land as divorcees, separated partners or heirs cannot be attained. The lesson from this experience is that family law and property law need to be in harmony for there to be effective protection.

Mozambique stands out as a good example of where the land law and other laws (for example, the new *Family Law*) have been harmonized to improve women's land rights. Similarly, Namibia's *National Gender Policy 2010-2020* provides for removing all components that discriminate against women, to bring customary laws in line with the Namibian Constitution. Kenya's *National*

*Land Policy* also makes provisions for the removal of a constitutional clause that legalized discrimination on matters of personal law (including inheritance and marriage), and now provides for equal spousal rights to matrimonial property and protects the rights of widows, widowers and divorcees through the enactment of a law on co-ownership of matrimonial property. In India, the *National Policy for the Empowerment of Women* of 2001 encourages changes in personal laws such as those related to marriage, divorce and maintenance so as to eliminate discrimination against women.

#### 4. Guarantee women's land rights in the constitution

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### RECOMMENDATION

#### National constitutions should:

- Ensure that women's equal right to access, use and control productive resources, including land, is specifically recognized (including equal rights with men with respect to the acquisition, administration, control, use and transfer of land).
  - Recognize that women have an equal and independent right to acquire, administer, control, use and transfer property irrespective of their marital and family status.
  - Ensure that discrimination against women is prohibited in all areas, including laws, customs and practices.
  - Ensure that international human rights instruments, such as the Convention on the Elimination of All Forms of Discrimination against Women, are incorporated into national law as applicable and that reservations are removed.
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### Commentary

National constitutions offer the highest form of legal protection and recognition of women's rights over productive resources. While many provide for gender equality, some specifically recognize women's land, housing and property rights.

For example, in Paraguay the 1992 Constitution provides, among the fundamental principles of the agrarian reform, for women's participation in reform plans on the basis of equality with men and support for rural women. The Bolivian Constitution of 2009 provides that the State has the obligation to "promote policies aimed at eliminating all forms of discrimination against women

in the access to, ownership and inheritance of land" (art. 402). The 2008 Constitution of Ecuador, as amended in 2011, provides that "the State shall guarantee equal rights and equal opportunity to men and women in access to property and decision-making in the management of their common marital estate" (art. 324). In Brazil, the 1988 Constitution and Law 8629 of 1993 state that both women and men, regardless of their marital status, can be allocated property rights or concessions under the agrarian reform, either individually or jointly.

The 1994 Constitution of Malawi stipulates that, on the dissolution of marriage, women have the rights to

a fair disposition of property that is held jointly with a husband and to fair maintenance together with the children (art. 24 (1) (b)). In addition, its article 24 (2) states that “Any law that discriminates against women on the basis of gender or marital status shall be invalid and legislation shall be passed to eliminate customs and practices that discriminate against women such as... (c) deprivation of property, including property obtained by inheritance.”

Namibia’s Constitution provides that “men and women ... shall be entitled to equal rights as to marriage, during marriage and at its dissolution” and that “all persons shall have the right to acquire, own and dispose of all forms of ... property individually or in association with others ...” (arts. 14 and 16). It also recognizes that international

human rights treaties are self-effecting once ratified (art. 144), which makes international human rights standards such as the Convention on the Elimination of All Forms of Discrimination against Women directly applicable within the national legal system.

Another example is Japan, which provides in its 1946 Constitution that “... With regard to choice of spouse, property rights, inheritance, choice of domicile, divorce and other matters pertaining to marriage and the family, laws shall be enacted from the standpoint of individual dignity and the essential equality of the sexes” (art. 24). Equally, the 2010 Constitution of Kenya provides for the elimination of gender discrimination in law, customs and practices related to land and property in land (art. 60).

## B. SECURITY OF TENURE AND PROHIBITION OF FORCED EVICTION

### 1. Women’s right to legal security of tenure

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#### RECOMMENDATION

##### Laws, policies and programmes should:

- Recognize legal security of tenure within rural, urban and peri-urban areas across the “continuum of land rights” (e.g., customary, group, collective, leasehold, freehold) and ensure that legal security of tenure is recognized and enforced for women on an individual basis irrespective of marital or other status.
  - Ensure that female victims of domestic violence enjoy security of tenure and that they have “a right to reside” in their marital homes.
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#### Commentary

Land tenure is properly understood as a “bundle of rights in land” which can include the right to occupy, enjoy and use; to cultivate and use productively; to sell, gift or bequeath; to mortgage or rent; or to transfer. Land tenure systems – ranging from informal to formal – determine who can use what resources for how long and under what conditions. In practice, land tenure may take a variety of forms, such as ownership, rental (public and private) agreements, cooperatives, leasehold or informal settlement – including informal occupation of land.

Land tenure – as the bundle of rights described above – is often described as being either secure or insecure. The reality is more nuanced. Seen holistically, there are certain factors that can make land rights more secure for women. Under the international human rights framework,<sup>73</sup> States are obliged to take immediate measures aimed at conferring legal *security of tenure* upon those persons and households currently lacking such protection, in genuine consultation with the affected persons and

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<sup>73</sup> Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991) on the right to adequate housing, para. 8 (a).

groups, regardless of the type of tenure they have. Therefore, notwithstanding the type of tenure, all persons must possess a degree of legal *security of tenure* which guarantees legal protection against forced eviction, harassment and other threats.

UN-Habitat advocates for a “continuum” of land rights, encompassing both informal and formal tenure systems. UN-Habitat concludes that while no single form of tenure can meet the different needs of all social groups, a range of land tenure options enables both women and men from all social groups to meet their changing needs over time. Each point along this continuum can provide for women’s rights to land, provided that discrimination is prohibited and that women are granted legal security of tenure. However, care must be taken to ensure that women’s rights are respected and that the concept of security of tenure itself is seen from an integrated gender perspective.

The Committee on World Food Security’s Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security specify that States should safeguard legitimate tenure rights against threats and infringements, i.e., they should protect tenure rights-holders against the arbitrary loss of their tenure rights, including forced evictions.<sup>74</sup>

In Ghana, the 1999 *National Land Policy*, amended in 2002, created the Land Administration Project to improve the land administration system in part by establishing an administrative structure which ensures that women, landless and vulnerable populations are provided with tenure security.

The *Uganda National Land Policy (Final Draft)* seeks to harmonize and streamline the complex tenure regimes in Uganda so as to ensure equitable access to land and security of tenure (see also sect. A.3 above). It states clearly that a good land tenure system must guarantee security of tenure and must correct provisions which constitute discrimination against women.

Because women most often gain access to land and housing through their relationship with a man, widowhood and domestic violence present a serious concern from the point of view of women’s security of tenure. Namibia’s *Communal Land Reform Act* of 2002 gives surviving spouses who reside in rural areas the right to remain on land allocated to their deceased spouses. This right is not affected by remarriage. In some countries, for instance, Brazil, India and Serbia, national domestic violence legislation now provides that victims of domestic violence are allowed to stay in the marital home, regardless of who owns it.<sup>75</sup>

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<sup>74</sup> See also FAO, *Governing Land for Women and Men: A Technical Guide to Support the Achievement of Gender-equitable Governance of Land Tenure* (Rome, 2013), available from [www.fao.org/docrep/017/i3114e/i3114e.pdf](http://www.fao.org/docrep/017/i3114e/i3114e.pdf) (accessed 24 July 2013).

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<sup>75</sup> “Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik” (A/HRC/19/53).

# CASE STUDY 3

## WOMEN RESISTING FORCED EVICTION:

### THE LANDLESS PEOPLE'S MOVEMENT IN BEEL KURALIA, BANGLADESH

Over the past two decades, some 1,500 landless peasant families have been struggling to retain a total of 473.23 acres (191.59 ha) of *khas* (State-owned) land in their possession at Beel Kuralia.

In 1987, the Government of Bangladesh adopted the Khas Land Management and Distribution Policy, according to which landless peasants should get priority in receiving *khas* land and which guaranteed joint ownership of land between husband and wife. It also set criteria for widows and abandoned women to be given priority to own *khas* land. As a result, 182 women of a rural area named Beel Kuralia now own *khas* land in their individual name. This land ensures their families' food security.

These families have had to endure a seemingly endless struggle to retain their land rights against illegal land-grabbing. On 2 May 1993, they were subject to brutal attempts to forcibly evict them. Their homes were looted and set on fire. During one attack, a young boy was caught and attackers chopped off his right hand. People accused the police of sheltering the perpetrators.

A national NGO, the Association for Land Reform and Development, brought together a group of journalists from the country's leading newspapers to investigate the attacks. They reported harassment, torture, killings and arson attacks on landless people's houses. These reports stirred the conscience and drew the attention of people from all walks of life. The Association started discussing the issues with local political leaders, convened press conferences and dialogues both at national and local level, and published news in its journal *Bhumibarta*. It gave legal aid to women so they could fight systemic corruption in the local land administration and hold local elites accountable through court processes.

Over the past two decades, a group of landless leaders – both men and women of Beel Kuralia – attended awareness-building workshops and training organized by the Association. These developed their capacity to benefit from the Government's Khas Land Management and Distribution Policy.

The landless people succeeded and kept the land under their possession. The landless women's movement, in particular, set an example for women's socioeconomic empowerment as well as for the successful implementation of the Khas Land Management and Distribution Policy. Many of these women leaders take the lead in local mediation and arbitration processes, especially on violence against women. As elected representatives of the people, they engage with the local government as well as in national politics.

*Source:* Rowshan Jahan Moni, Association for Land Reform and Development, Bangladesh.

## 2. Forced evictions against women at the hands of public and private actors

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### RECOMMENDATION

#### Laws, policies and programmes should:

- Provide women legal protection against forced eviction in rural, urban and peri-urban areas at the hand of both public and private actors. This protection should consider the specific needs of women.
- Ensure that all forms of forced eviction at the hands of both public and private actors particularly perpetrated against women (for example, “property-grabbing”) are illegal and subject to criminal penalties.
- Create gender-sensitive and effective enforcement mechanisms, such as special police units, to ensure that women are able to claim their rights when they have been subjected to forced eviction, disinheritance or property-grabbing. These enforcement systems should have all the human, financial, legal, technical and other resources needed to make them effective (see also sect. C below).

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### Commentary

States should explicitly prohibit the practice of forced evictions. Forced evictions constitute gross violations of a range of internationally recognized human rights, including the human rights to adequate housing, food, water, health, education, work, security of the person, freedom from cruel, inhuman and degrading treatment, and freedom of movement. Forced evictions are defined as the permanent or temporary removal against the will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection. Property-grabbing, or disinheritance, at the hands of private actors, may also be considered as a form of forced eviction perpetrated against women (see also case study 3 on Bangladesh).

In South Africa, the *Prevention of Illegal Eviction from and Unlawful Occupation of Land Act* of 1998 provides for the prevention of forced eviction, and further notes that “special consideration should be given to the rights of the elderly, children, disabled persons and particularly households headed by women, and that it should be recognised that the needs of those groups should be considered.”

Some countries also offer specific protection against property-grabbing (also known as disinheritance).

Zambia’s *Intestate Succession Act* of 1989, for example, imposes criminal penalties on those who wrongfully deprive rightful heirs of their property. Zambia also established a special victim support unit within its police force to protect women from property-grabbing after the death of a spouse and enforce their rights. This unit has been described as “an innovation that has helped to curb incidences of property-grabbing. The dissemination of its activities through women’s NGOs, ... and the media, is enabling women to realize that they are not completely helpless when confronted with such situations.”<sup>76</sup>

In Malawi, the *Deceased Estates Act* of 2011 declares any property-grabbing by a deceased spouse’s relatives to be a criminal act and subject to criminal prosecution. In Zambia, the *Wills and Administration of Testate Estates Act* of 1989 prohibits “intermeddling” with the property of rightful heirs. Any person who wrongfully deprives a rightful heir of her or his property is liable to criminal sanction.

The Basic principles and guidelines on development-based evictions and displacement provide further guidance on protecting women’s rights in the context of eviction and displacement (see also chap. I.A.2).

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<sup>76</sup> UN-Habitat, *Land Tenure, Housing Rights and Gender in Zambia* (Nairobi, 2005).

## C. LEGAL SYSTEMS AND ACCESS TO JUSTICE

### 1. Legal pluralism

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#### RECOMMENDATION

##### Laws, policies and programmes should:

- Transform (through review, amendment and/or repeal) all laws (statutory, religious and customary), regulations, customs and practices which discriminate against women or which in any way limit or negatively affect their access to, use and control of land and other productive resources (see also sect. A.3 above).
  - Ensure that all justice mechanisms, including religious and customary mechanisms, respect, protect and fulfil women's rights to land and other productive resources, and that the relevant authorities are held accountable when they fail to do so.
  - Support women in challenging discriminatory aspects of formal, religious and customary law.
  - Seek effective ways to bring coherence to formal, religious and customary systems, so as to advance gender equality and women's empowerment, particularly as related to access, use and control of land and other productive resources.
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#### Commentary

Many countries have situations of dual or multiple justice systems, with statutory, customary and/or religious legal systems. The relationship between statutory and customary and/or religious law is determined by the status of customary and/or religious law within the legal system. This varies across countries, ranging from full or partial recognition to non-recognition of customary and/or religious law. In countries with different ethnic or religious groups, customary or religious legal systems may stipulate a range of personal laws, therefore changing women's legal status depending on her origin.

Even in countries where statutory law supposedly trumps customary and/or religious law, the reality is that custom and religion continue to play a pivotal role in the lives of women and men, even if formal laws seek to restrict their powers. Still, regardless of the arrangements, formal and customary and/or religious legal systems must uphold the rights of women (see also chap. I). On issues of land, equal access and control for women have been of special concern, because customary law has often been used to deny women's equal land rights.

There are good practices in laws and policies to ensure the protection of women's rights in the context of

customary or religious systems. Divergence between statutory (formal) law and customary and/or religious law can be addressed at the highest level, namely with constitutional protections. For example, in Uganda the Constitution prohibits "laws, cultures, customs or traditions which are against the dignity, welfare or interest of women ... or which undermine their status" (art. 32). The *Uganda National Land Policy (Final Draft)* also commits to reform customary law, to modify the rules of transmission of land rights under customary land tenure, to guarantee gender equality and equity; and to ensure that the decisions of traditional land management institutions uphold constitutional rights and obligations with regard to gender equality. In this policy, the Government of Uganda specifically commits to protect the rights of access to, inheritance and ownership of land for women and children, and to address the existing gender inequality and ensure that both men and women enjoy equal rights to land before marriage, in marriage, after marriage, and at succession, without discrimination. It also recognizes and solicits the support of religious and cultural leaders to accept and implement measures designed to protect the rights of women and children (see also case study 4 on China and case study 6 on Rwanda).

The courts have been another vehicle for addressing conflict between legal systems. In Kenya, in the *Ntutu* case (2008), the High Court heard arguments by the sons of the deceased that Masai customary law of succession does not recognize the rights of daughters to inherit the estate of their fathers. However, in rendering its decision, the Court applied international human rights law, international covenants and treaties which had been ratified by Kenya, as well as previous case law. The Court upheld the right of the daughters to inherit equally from the assets of the estate.<sup>77</sup>

In the *Bhe* case, the Constitutional Court of South Africa found that the practice of male primogeniture (the custom of the firstborn male inheriting the entire estate), as provided for under customary law, was discriminatory and classified as unconstitutional all legislation that allowed such discriminatory laws to be applied. Following this decision, South Africa enacted the Reform of Customary Law of Succession and Regulation of Related Matters Bill, which gave customary widows and daughters and widowers and sons equal inheritance rights. In *Mojekwu v. Mojekwu*, the Nigerian Court of Appeal similarly held that the Nnewi custom of *Oli-ekpe* (prohibiting the inheritance rights of females and providing that the eldest male in the family will inherit) was discriminatory and any form of societal discrimination on grounds of sex was held unconstitutional and against the principles of an egalitarian society.

Another similar example is the case of *Epharrahim v. Pastory & another*, in which the Tanzanian High Court invalidated customary norms preventing women from selling land. Most recently, in October 2012, in the case of *Mmusi and Others v. Ramantele and Another*,

the Botswana High Court ruled that the customary laws which provided for male-only inheritance of the family home were discriminatory and illegal under the Constitution.

There are also ways of trying to ensure better coexistence between statutory laws and customary law and practice. Namibia's *Communal Land Reform Act* of 2002, while keeping customary land tenure rules largely intact, altered customary administration structures. This meant that although traditional authorities may still allocate customary land and revoke rights to customary land, applications for customary land must be made in writing. The decisions made by traditional authorities are subject to the approval of community land boards, the jurisdictions of which are determined by the Minister of Lands. The Minister appoints the board members, who typically number at least 12. The community land boards must include four women (two engaged in farming and two who have other substantive expertise relevant to the functions of the board). These community land boards can, in practice, provide an extra layer of protection for women.

As mentioned above, Namibia's *Communal Land Reform Act* of 2002 also provides that both widows and widowers have a right to remain on their land after the death of their spouse, even if they subsequently remarry. If a surviving spouse who stays on the land remarries and dies, the new surviving spouse will also have a right to remain on the land. However, if the second surviving spouse dies, the land reverts to the traditional authority to determine who has the right to stay on the land. This decision must be made in consultation with the members of the concerned family or families identified by the traditional authority with reference to the relevant customary law.

<sup>77</sup> Similar examples exist elsewhere. For examples from Uganda, see footnote 72. Most recently in Swaziland, the High Court ruled that married women have a right to register property in their own name, rather than solely in their husband's name. See also *Aphane v. Registrar of Deeds & Others*, High Court of Swaziland, civil case No. 383/2009, Judgement of 23 February 2010.

# CASE STUDY 4

## GOOD PRACTICE FOR ADDRESSING WOMEN'S LAND RIGHTS IN CHINA

One of the key factors that negatively affect women's land rights in China is that much discretion is given to village committees to make rules on allocating land and land-related benefits. Traditional gender practices and norms such as patrilocal residence and patrilineal inheritance influence the decisions of the village committees in such a way that renders women's land tenure insecure. However, there is no institution or mechanism to review or appeal the legitimacy of the village rules. Some local governments and women's organizations have taken the initiative to tackle this issue.

The Nanhai district government of Foshan City in Guangdong Province of China is one of the few local governments that actively took action to address the violation of "married-out" women's land rights at the village level. "Married out" refers to the idea that once a woman marries someone from another village, she is seen as neither fully part of her husband's family nor of her birth family, leaving her in a precarious position. The experiences of Nanhai district set a good example for how local government can play a key role in effectively supervising and rectifying village rules that infringe women's land-related rights and interests.

With clear guidance and principles for ensuring "married-out" women's equal land rights and land-related benefits based on relevant Chinese laws, the district government set up a working group of government officials to review the village rules and work together with villagers to change the provisions which discriminate against women's equal rights to land. For those very few villages that refused to change their rules to grant "married-out" women equal land rights, judicial procedures were applied to enforce compliance. The combination of administrative and judicial means proved to be very effective. After one year of administrative and judicial intervention, about 18,000 married women were granted equal land-related rights and interests. They constitute 95 per cent of the married women in this district.

Besides the external forces of administrative and judicial interventions, protecting rural women's land rights also requires fundamental shifts in farmers' thinking about women's rights to land and land-related benefits. Some women's organizations in China carried out training and educational projects for farmers to encourage them to change traditional ideas and norms that discriminate against women and negatively affect their land rights. This has proved very effective in building gender awareness among village leaders as well as ordinary villagers. Through active involvement in training and participating in open and intensive discussions, farmers, including women, get an opportunity to reflect on the traditional norms, which have dominated their lives for generations, and to identify for themselves those that are discriminatory against women. Consequently, some of the villages involved in these projects amended their rules through democratic procedures within the community and granted women equal rights, including rights to land.

*Source:* Xiaobei Wang, Landesa Center for Women's Land Rights, China.

## 2. Access to justice and enforcement

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### RECOMMENDATION

#### Laws, policies and programmes should:

- Ensure that all women benefit from legal literacy campaigns (see sect. G.2 below) and are able to access formal avenues of justice that protect their rights.
  - Ensure that courts are fully accessible and affordable to all women, and that all women are able to access low-cost or free legal aid and other legal services in their own language.
  - Ensure that justice mechanisms are provided with the necessary human, financial, legal, technical and other resources to make them effective.
  - Ensure that legal professionals, including judges, prosecutors and lawyers, receive regular training on women's equal rights to land and other productive resources.
  - Provide religious and customary justice authorities with training on women's rights, as well as other relevant support, in order for them to effectively protect women's rights within the scope of their jurisdiction and encourage fair decision-making about women's land rights.
  - Ensure that women are able to opt out of religious and customary processes should they choose, and appeal to formal justice systems for redress.
  - Support, through financial and other means, positive local initiatives which affirm women's position and leadership, and support women's equal rights to land and other productive resources, including via community-led paralegals, watchdogs, land tribunals and other community strategies.
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### Commentary

Rights mean little if they cannot be claimed and enforced. Access to justice mechanisms for women means that women are able to access legal processes that are legitimate, gender-sensitive, affordable, easy to follow and physically accessible. Furthermore, the person filing must believe that there is a chance that the claim will have a favourable outcome or have faith in the fairness of the results. Judgements upholding rights must also be adequately enforced.

For formal legal systems, evidence suggests that justice chains can become more responsive to women's needs through one-stop shops and legal aid, investing in women service providers, and providing specialized courts and gender-sensitive judicial decision-making.<sup>78</sup>

Customary and/or religious justice and dispute resolution systems may be more accessible than other forums, particularly in rural areas. In Rwanda, for example, appearing before an *abunzi*, or mediation committee, is a required first step in seeking redress for

a land rights-related dispute. The *abunzi* are traditional dispute resolution mechanisms. By law, every ten villages (called a cell) have a mediation committee made up of ten members, at least 30 per cent of whom are women. They tend to be respected members of the community, so their decisions have weight. The *abunzi* are therefore much more accessible to the community than a traditional court (see also case study 6 on Rwanda).

Such systems can be mobilized to play a positive role in protecting women's property rights – particularly if this role is backed up with general legislation. To safeguard women's rights, traditional leaders and decision makers should receive training about women's rights and their responsibilities to uphold these rights. In Kenya, for example, local traditional authorities have been made aware of the contributions women make to their communities. Under the 2010 Constitution, traditional leaders have increased responsibility for protecting and enforcing constitutional rights, including women's rights to land

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<sup>78</sup> *Progress of the World's Women 2011–2012: In Pursuit of Justice.*

and other productive resources. In one community, elders in Ol Posimoru drafted a new local constitution (known as a “katiba”) that protects women’s property rights. In Namibia, traditional authorities in some areas have supported widows in asserting their rights to remain on their deceased husbands’ communal land and resisting efforts by relatives to remove them (see also subsect. 1 above). A UN Women programme in sub-Saharan Africa to reduce women’s vulnerability to HIV and to mitigate its impact through improved access to property and inheritance rights (hereinafter “HIV and legal empowerment programme”) has improved the knowledge and awareness of more than 2,000 traditional and community leaders on women’s property and inheritance rights through training, advocacy, outreach and community dialogues. Engagement of these stakeholders has resulted in enhanced commitment and positive support for women’s property rights.

Such efforts must be undertaken with care and always with the rights of women in mind. There should always be a way for women to opt out of traditional, customary or religious processes should they so choose, and appeal to formal systems. In all cases, women should be empowered to know their rights and how to claim them.

Many women’s rights organizations have successfully established entirely new structures at the community level which can protect women’s rights in practice. Several strategies have also been used by women and their advocates at the local level to effect positive

change. For example, some organizations are training community watchdogs and paralegals to protect women’s rights.

In Kenya, grass-roots women’s groups such as GROOTS Kenya have organized community paralegal training to strengthen the capacity of community watchdogs. Programming that fosters closer relations between informal justice systems and local legal aid providers, such as paralegals, has had positive results. Similar initiatives have been spearheaded by other grass-roots women’s groups in the region, such as Seke Rural Home Based Care (Zimbabwe), Ntengwe for Community Development (Zimbabwe), Ntankah Village Women Common Initiative Group (Cameroon), Rwanda Women’s Network (Rwanda), Coalition Of Women Farmers (Malawi), International Women Communication Centre (Nigeria) and Grassroots Sisterhood Foundation (Ghana).

In Kyrgyzstan community-based advisers on legislation were established. Men and women were trained on major land-related issues and provide free advice to the villagers. They help women to understand the process of applying for land. This experience was later successfully replicated in Tajikistan.

These local initiatives are promising, and should be directly supported by governments and others seeking to better promote and protect women’s land and property rights and ensure that women have access to justice to claim their land rights.

### 3. Promote the positive aspects of customary systems for women

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## RECOMMENDATION

### Laws, policies and programmes should:

- Promote customs and practices that favour women's access to, use and control of land and other productive resources.
  - Encourage customary and religious leaders to raise awareness within their own communities about women's rights to land and other productive resources.
  - Engage communities in discussions about gender-sensitive interpretations of religion, customary law and statutory law.
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### Commentary

Aspects of customs and norms that actively promote women's rights should be supported. The amaHlubi community of KwaZulu Natal Province, South Africa, is a good example of how customary law can be applied in a way that recognizes gender equality. The amaHlubi have an approach which promotes women's rights and integration in community life, including by recognizing their rights to land and other productive resources.<sup>79</sup>

There have been developments on Erromango Island, Vanuatu, whereby women are able to claim land rights in the absence of male heirs, dispelling the myth that women traditionally never hold land. This shows that customary land practice need not be bound by inflexible inheritance rules, but can operate on principles of access to livelihood and ensuring social inclusion.

Where discriminatory aspects exist, change should be promoted taking into account that customs and traditions are not static; they can and do change over time. There are considerable variations between and within customary legal systems, as well as statutory systems. The Australian Agency for International

Development's Pacific Land Programme has observed that "individuals and institutions involved in land law and administration can ensure that women have adequate input into decision-making and that interpretations of custom that give greater recognition to women's rights are favoured over interpretations that give less recognition to them."<sup>80</sup>

In most cases, the positive aspects of custom and tradition can be illuminated, cultivated and strengthened. Indeed, reinforcing positive aspects of traditional land tenure systems that encourage and support women's access to productive resources can produce strong results.

In the future, the World Bank's *Jastis Blong Evriwan* programme in Vanuatu will be using case studies to document processes where women have been able to overcome existing barriers to participation in decision-making around land and receive more equitable outcomes – thus reinforcing positive approaches to social inclusion within traditional systems, for stakeholders like the Malvatumauri National Council of Chiefs and the Government of Vanuatu to take forward.

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<sup>79</sup> Centre on Housing Rights and Evictions (COHRE), *Bringing Equality Home: Promoting and Protecting the Inheritance Rights of Women – A Survey of Law and Practice in Sub-Saharan Africa* (Geneva, 2004).

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<sup>80</sup> Australian Agency for International Development, *Making Land Work*, vol. 1, *Reconciling Customary Land and Development in the Pacific* (Canberra, 2008), p. 88.

## D. MARRIAGE AND FAMILY

### 1. Marital property rights

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#### RECOMMENDATION

##### Laws, policies and programmes should:

- Recognize full or partial community of property as the default marital property regime.
  - Ensure the joint administration of marital property, particularly as related to immovable property, and ensure that clear consent requirements are in place for the transfer or sale of such property, requiring the informed written consent of spouses.
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#### Commentary

Marital property is a key issue in understanding the status of women's rights related to land and other productive resources. It provides for rights within the context of marriage and is conceptually distinct from the notion of "inheritance", covered in subsection 3 below.<sup>81</sup> Countries may apply very different default approaches to marital property, ranging from "full separation of property,"<sup>82</sup> to "partial or limited community of property,"<sup>83</sup> to "full community of property."<sup>84</sup>

In many countries a marital property approach reflecting an "equalization of marital property" when a marriage ends has been put in place, recognizing women's non-economic and indirect contributions to marital property. This is the case in Austria, Canada, Croatia, Denmark, France, Germany, Greece, Italy, the Netherlands, New Zealand, Norway, Spain, Sweden and the United States.<sup>85</sup> Where full community of property or partial community of property is the default regime,

antenuptial or prenuptial agreements can also generally be used to provide couples with greater choice, as appropriate, if they prefer greater separation of property and finances.

Many countries have adopted partial or full community of property as their default marital property regime for civil marriages. For example, the *Revised Family Code* (2001) of Ethiopia provides for partial community of property, as well as joint administration of marital property. Consent of both spouses is mandatory for the transfer of common property. The law also provides that, in the event of dissolution, common property will be divided equally between the spouses.

The Brazilian *Civil Code* of 2002 provides for the equality of rights and duties of spouses and for the application, in the absence of prenuptial agreements, of a regime of partial community of property, with each spouse having equal rights to administer common property and to administer her or his own separate property.

Cambodia's *Marriage and Family Law* of 1989 also provides for partial community of property as the default regime, noting that a wife and husband have equal rights to use, obtain benefits and manage joint property. Each spouse is allowed to use the joint property in accordance to need and joint property may be sold or donated only with the consent of both spouses. The law also provides that a woman has equal rights with her husband in divorce and that wives and husbands have equal rights to common property after marriage (see also case study 5 on South Africa and chap. I).

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<sup>81</sup> This is because if laws on marital property provide for a certain division of the couple's assets upon dissolution of the marriage, the assets which rightfully belong to the surviving spouse will not form part of the deceased's estate. Legal Assistance Centre, *Marital Property in Civil and Customary Marriages: Proposals for Law Reform* (Windhoek, 2005).

<sup>82</sup> Wherein all property acquired by the spouses prior to and during their marriage remains the separate property of the spouse who acquires it. International Centre for Research on Women, "Connecting rights to reality: a progressive framework of core legal protections for women's property rights", 2007, p. 6.

<sup>83</sup> Wherein assets acquired by each spouse prior to the marriage are regarded as separate property, and those acquired after marriage, along with the income earned during marriage by each spouse, are regarded as joint property, with limited exceptions. *Ibid.*

<sup>84</sup> Wherein assets and income brought into the marriage and acquired during the marriage become joint property of the couple. *Ibid.*

<sup>85</sup> Women and Law in Southern Africa Research Trust–Malawi and Canadian HIV/AIDS Legal Network, "Respecting and promoting the realization of women's marital property rights in Malawi", Briefing Paper, 2011.

# CASE STUDY 5

## MARITAL PROPERTY RIGHTS IN SOUTH AFRICA

In South Africa, the *Matrimonial Property Act* of 1984 prescribes a default marital property regime of *community of property* for all civil marriages, in the absence of an antenuptial contract stating otherwise. Under a community of property regime, all of a couple's assets and liabilities are pooled and shared equally by the spouses, irrespective of whether they were acquired before or during the marriage, unless expressly excluded by a donor or testator. All profits and losses are borne equally by the spouses and each spouse assumes joint control with his or her partner over the estate. While a spouse in a marriage subject to a community of property regime may perform "any juristic act with regard to the joint estate without the consent of the other spouse", a number of restrictions apply, and a spouse shall not perform certain acts, such as the sale of immovable property (including the matrimonial home) forming part of the joint estate, without the consent of the other spouse. Upon divorce or death, each spouse or the surviving spouse of a marriage subject to a community of property regime is entitled to half the joint estate. If the *Matrimonial Property Act* is effectively applied, a woman under a community of property system is essentially guaranteed that she will receive half of the joint estate upon dissolution of the marriage.

Significantly, even where couples choose to opt out of the default marital property regime of community of property by antenuptial agreement, they are automatically subject to a default marital property regime of "accrual" (also referred to as a "community of gains"), unless they also expressly exclude such a regime. Under a regime of accrual, each spouse retains and administers his or her own assets and liabilities during marriage. However, when a marriage subject to an accrual regime dissolves by death or divorce, the growth in value of assets accumulated by the two spouses during the marriage is automatically divided equally. Nevertheless, couples are free to have a regime of complete separation of property by explicitly excluding accrual in their antenuptial contract, and a significant proportion of couples marrying in the years immediately following the passage of the *Matrimonial Property Act* opted to do so.

The *Matrimonial Property Act* radically reformed South Africa's law of marital property. Prior to its passage, a husband's "marital power" and both the community of property and separation of property regimes existed in South Africa. As the South African Law Reform Commission clarified, under this system, "... courts were given a discretion in distributing marital estates to avoid the inequity (*that is especially likely to arise in cases of separation of estates*) of one spouse leaving the marriage empty-handed."<sup>a</sup>

<sup>a</sup> South African Law Reform Commission, "The harmonization of the common law and the indigenous law: Report on customary marriages", 1998.

## 2. Removal of marital power and the “head of household” concept

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### RECOMMENDATION

#### Laws, policies and programmes should:

- Abolish the notion of marital power.
  - Abolish the concept of “head of household” in legal designations and entitlements where its application would result in de facto discrimination against women, including the provision or allocation of land and other productive resources in favour of male “heads of household”.
  - Ensure that single female heads of households are able to enjoy temporary special measures which enable them to access land rights on an equal footing.
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### Commentary

Legislation in relation to marital property regime will be effective only if any “marital power” provisions which may undermine women’s position of equality within the marriage are also removed.

The granting of marital power to one spouse (generally the husband) over the other (generally the wife), as well as over joint property, is a provision in some civil and customary legal systems which runs deeply counter to the right to equality between men and women. Marital power assumes that husbands are the heads of the households, or legal representatives of households, with the authority to make decisions on behalf of the couple or family without the consent of their spouse/s, including exclusive rights to administer property. International human rights law is clear on the prohibition of marital power.

In many countries marital power provisions have been changed. Botswana’s *Abolition of Marital Power Act* of 2004 provides for equality of marital powers for couples married within community of property. Similar legislation has also been adopted via Mozambique’s new *Family Law* of 2004, which established gender equality in all aspects of family law. Namibia took a similar approach in its *Married Persons Equality Act* of 1996, which abolished the marital powers of the husband and placed spouses on an equal footing. Likewise, under Turkey’s *Civil Code* of 2001, the husband is no longer considered to be the head of the household, and husband and wife have equal status within marriage.

Similarly, in Latin America, the past few decades have seen major improvements in women’s legal status, particularly with regard to family law. Most countries have repealed laws identifying the husband as the

head of household and limiting the capacity of women to administer family property.

In practice, the “head of household” concept closely parallels the notion of marital power, although cloaked in more gender-neutral language. While women are sometimes deemed to be heads of their households, this is most often the case when no man is present. As such, the effect of the “head of household” concept has been one of bias against women. For example, the application of “head of household” provisions have undermined women’s rights to land and other productive resources as titling programmes have tended to prefer recognition of men’s rights exclusively. As FAO has pointed out, “... while land reform programmes adopting the household as the beneficiary unit and issuing land titles to the (male) household head may still provide female household members with access to land, they may undermine their bargaining power – and thus their social position.”<sup>86</sup>

Around the world, States have been doing away with the head of household concept. In the Republic of Korea in 2005, the Constitutional Court abolished the family headship system, whereby inheritance moved from the male head of the household to his son, because it contravened the Constitution. The amendment to the Civil Law came into effect in January 2008.

However, abolition of the head of household concept should not preclude female-headed households, which are typically poor and have access to fewer resources, from receiving targeted benefits aimed at improving their standard of living, including in relation to land and other productive resources (see also chap. I).

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<sup>86</sup> FAO, *Gender and Law: Women’s Rights in Agriculture*, FAO Legislative Study No. 76, revised edition (Rome, 2007), p. 21.

### 3. Equal inheritance rights

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## RECOMMENDATION

### Laws, policies and programmes should:

- Ensure equality between women and men, as well as between girls and boys, in all matters related to inheritance.
  - Ensure that the surviving spouse(s), regardless of gender or whether the surviving spouse(s) has (have) children, has (have) at a minimum continued occupancy and use rights with respect to the marital home as well as to movable and immovable property, including land, without precondition.
  - Discourage the practice of inheritance renunciation and educate women and men about the negative impact of this practice (see also sect. G below).
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### Commentary

Inheritance is the practice of passing on property, titles, rights and obligations (e.g., debts) upon the death of an individual. Inheritance has emerged as a key issue in the struggle for women's land, housing and property rights, including within the context of HIV/AIDS, which in some countries has accelerated the practice of property-grabbing, or "disinheritance", against widows. Inheritance is an important issue because it is a fundamental way in which wealth is transferred within a family, a society, as well as between generations. For many women, however, law and/or custom too often preclude their being able to benefit on an equal footing – if at all – which make them completely unable to tap into the economic benefits and security that inheritance can bring.

Inheritance is closely related to marital property rights (see subsect. 1 above), yet they are also conceptually distinct. While inheritance rights do not and cannot supplant a woman's property rights in marriage, they are important and can bring about a genuine improvement in women's socioeconomic status.

Concerning inheritance from a deceased spouse's estate, most countries in the world now provide for the surviving spouse, regardless of gender, to have equal inheritance rights to the marital home as well as to movable and immovable property. Some countries, for example Canada, designate a "spouse's share" of inheritance, which is a portion of the deceased's estate that will automatically devolve to the surviving partner. In many cases, other family members (for example, children of the deceased) are also provided for, although

in some circumstances only if the value of the estate exceeds the spouse's share.

While other countries do not provide for equal inheritance rights between women and men, there are important advances being made. In Sierra Leone, for example, equality in matters of inheritance is now provided for through the *Devolution of Estates Act* of 2007. Ghana's *Intestate Succession Law* of 1985 also provides for the spouse and children of a person who died intestate (i.e., without a will) to inherit most of the property of their deceased spouse/parent. A draft *intestate succession bill* being considered by the Ghanaian Parliament would provide a uniform intestate succession law that would be applied irrespective of the customary inheritance system of the intestate and the type of marriage contracted. It would provide that "where the intestate is survived by a spouse or by a child or both a spouse and a child, the spouse or the child is or both of them are entitled absolutely to the household property of the intestate."

Inheritance also applies to daughters inheriting from their parents' estate. In India, the *Hindu Succession (Amendment) Act* of 2005 removed provisions in the 1956 *Hindu Succession Act* which discriminated based on gender. In particular, the Act resulted in daughters becoming equal heirs of coparcenary property,<sup>87</sup> thereby giving them the same legal rights as sons.

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<sup>87</sup> Coparcenary is the legal concept whereby two or more people inherit a title equally between them.

Provisions of Nepal's *Civil Code* limiting the inheritance rights of daughters were challenged in court. There the law had entitled daughters to an inheritance share only after they reached the age of 35 and were unmarried. Were they to marry, the law provided for land restitution to the family. The Supreme Court directed the Government to amend the law in the light of the equality provision enshrined in the Constitution. In 2002, the 11th Amendment of the Civil Code was passed by Parliament, recognizing girls'/women's equal right to inherit parental property, although gaps remain.

In the Middle East and North Africa, inheritance laws and practices are governed in many countries by sharia law (or Islamic law), which determines how inheritance shares are to be distributed within the family. In matters of inheritance, in general, a woman's share will be half that of a male in the same position.<sup>88</sup>

This system of males inheriting twice as much as females has been justified on the basis of men's duties under sharia law to maintain their families. Many Islamic women's rights advocates see the practice of unequal inheritance as contrary to women's rights, and as reinforcing women's subordination within the family and society.

Some countries have altered the application of Islamic law when it comes to matters of inheritance. Tunisia modified the rules on inheritance by favouring the spouse and female descendants over male cousins in some specific kinship configurations. Under the Turkish *Civil Code*, sons and daughters inherit equal shares of their parents' estate without discrimination.

Customary practices and traditional structures, as well as fear of stigma and social exclusion/ostracization, can also force women to renounce their already reduced inheritance, and to hand it over to a male member of the family. In several places, measures have been taken to address this. In the occupied Palestinian territory, the Head of the Higher Council of Sharia Jurisdictions

and Head of the Sharia High Court issued a notice in 2011 which imposed certain conditions before a woman could be considered to legally renounce her inheritance share. The conditions include the passage of at least four months after the deceased person's death before a renunciation of inheritance can be registered. The relevant authorities are also required to verify the real value of the inheritance share, based on a report by three experts authorized by the municipality or local council. This new protocol is aimed at helping women to retain their inheritance shares and protecting women from losses as a result of reduced valuations of those shares.<sup>89</sup>

In Jordan, an amendment to the *Personal Status Law* provides that property of the deceased should be registered in the name of the testator immediately after death and mandates a three-month waiting period before a woman can waive her inheritance rights. This amendment addresses the situation in which women lost their inheritance rights as they were approached by male relatives following the death of a son, husband or father and asked to sign documents that waived their inheritance rights. In Saudi Arabia, the Justice Ministry also launched a "mawarith" (inheritance) programme on its website, intended to help people find out how inheritance is distributed according to Islamic law. Most inheritance disputes in the Saudi courts are related to men depriving their female relatives of their legal share, a crime for which violators could face imprisonment and other punishments.

Another impediment to women's access to inheritance rights is the lack of proper documentation in which to establish a legal basis for claims, such as birth certificates, identity cards, marriage certificates and death certificates. Under the HIV and legal empowerment programme of UN Women, GROOTS Kenya, a grass-roots network of women's self-help groups and community organizations, has organized local registration drives to assist vulnerable women and children obtain the required documentation to establish legal claims for inheritance.<sup>90</sup>

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88 *Taking Action: Achieving Gender Equality and Empowering Women*.

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89 A/HRC/19/53.

90 See [www.groots.org/members/kenya.htm](http://www.groots.org/members/kenya.htm).

## 4. Cohabitation, polygamy and customary marriage

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### RECOMMENDATION

#### Laws, policies and programmes should:

- Recognize the equal rights of spouses regardless of whether a marriage, union or partnership is civil, religious or customary (including polygamous marriages, regardless of whether polygamy is legal or not).
  - Ensure that women in customary or de facto unions enjoy the same property and inheritance rights as women married under civil law.
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### Commentary

Dealing with polygamous marriage is one of the more difficult issues when it comes to addressing women's land, housing and property rights. In some countries, women married under polygamous or customary arrangements are left in a legal "black hole" without the protection afforded by civil law marriage, and are subject to discriminatory practices. While many countries do legally prohibit polygamous marriages, it is still practised.

A number of countries have taken measures to protect women in polygamous and customary marriages. In Kenya, the *Law of Succession Act*, revised edition of 2008 (1984), provides that "a woman married under a system of law which permits polygamy is, where her husband has contracted a previous or subsequent monogamous marriage to another woman, nevertheless a wife ... and her children are accordingly children within the meaning of this Act." Accordingly, the law makes no distinction between wives in polygamous marriages and wives in monogamous marriages.

In 2009, the South African Constitutional Court upheld a lower court decision that all the widows from a polygamous Muslim marriage would be entitled to claim from the estate of a husband who dies intestate

(i.e., without leaving a will).<sup>91</sup> Research also suggests that in addition to legal protection, wives in polygamous marriages must also benefit from awareness-raising programmes so that they know their rights and are able to claim them (see also sect. G below).

On customary marriages more generally, Mozambique's new *Family Law* (2004) stipulates the obligation to register customary or religious marriages with civil authorities and recognizes de facto marriages, or common-law marriages. It also recognizes customary law marriages and non-formal unions, and women married under custom can claim marital property.

In Jamaica, the 2003 *Family Property (Rights of Spouses) Act*, which entered into force in 2006, recognizes the rights of women living in a cohabitation arrangement with a man for at least five years. Trinidad and Tobago's *Cohabitation Relationships Act* of 1998 also provides for the jurisdiction of courts to make orders in respect of interests in property and maintenance for a man or woman who are or have lived together as husband and wife on a bona fide domestic basis, even though they were not married to each other. Cohabitants have similar rights to property as married spouses.

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<sup>91</sup> *Hassam v. Jacobs NO and Others*, CCT83/08 [2009] ZACC 19, Judgement of 15 July 2009.

## 5. Divorce

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### RECOMMENDATION

#### Laws, policies and programmes should:

- Ensure equal land and property rights for men and women in the event of divorce and dissolution of marriage.
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#### Commentary

Division of property in the event of divorce is closely related to the issue of marital property regime, discussed above, and is generally subject to marriage and family law. Women's property rights in divorce situations are critical, because divorce could lead to poverty, and unequal rights in divorce are also a real barrier to women leaving abusive relationships. In some countries, divorce can be tantamount to destitution for women.

Many countries have strengthened women's rights upon divorce to ensure greater equality. Divorce laws in many countries provide that women are entitled to keep their separate property plus half the joint marital property. In Cambodia, the *Marriage and Family Law* of 1989 recognizes the equal property rights of wife and husband in divorce. Wives and husbands have equal rights to joint property acquired after marriage. The Plurinational State of Bolivia and the Bolivarian Republic of Venezuela provide similar equal protections for wives and husbands under their *Family Code* (1988) and *Civil Code* (1982), respectively.

In an interesting precedent, in Brazil the President issued a decree stipulating that women who are enrolled in

the Government's low-cost homebuilding programme will be entitled to ownership of the house in divorce settlements. Brazil recognizes partial community of property, but under the new decree, men will have the right to keep the family home after divorce only if they retain custody of the couple's children. In India, the *Marriage Laws (Amendment) Bill* of 2010 also "marks the first attempt to legally recognize a wife's right to property acquired by her spouse during their marriage" by providing a defined share of the husband's property acquired after marriage to the wife.<sup>92</sup> In Jordan, the *Personal Status Law* (1976) states that a wife has the right to stay at the marital home after divorce and during the waiting period (130 days) until divorce becomes final.

It is recommended that where any traditional payments of dowry are made (or contractual *mahr* commitments in Muslim marriages), this does not impede or preclude recognition of women's equal rights to property upon divorce.

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<sup>92</sup> "Cabinet gives nod to quick divorces", *Times of India*, 24 March 2012.

## E. LAND LAW, POLICY AND PROGRAMMING

### 1. Gender-sensitive land laws, policies and programming

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#### RECOMMENDATION

##### Laws, policies and programmes should:

- Be harmonized to ensure they are mutually reinforcing in their efforts to respect, protect and fulfil women's rights to land, including in relation to the specific areas covered in this section (e.g., land titling and registration, access to loans and credits, and agricultural extension services) (see also sect. A.3 above).
  - Ensure that women's rights, needs and perspectives are taken into account in land and agricultural law, policy and programme development, including in assessment and analysis, programme planning and design, implementation, monitoring and evaluation, and that processes are participatory and transparent (see also sect. A.1 above).
  - Clearly articulate the principle of equality between men and women with respect to land allocation and ensure that women receive plots of equal size and value to those allocated to men in comparable situations within the context of land reform and/or land distribution programmes.
  - Ensure that the full range of land tools (e.g., plans, guidelines, operational manuals, training modules, land tenure instruments, land records databases, monitoring and evaluation instruments) have an integrated gender perspective, and promote women's effective, secure and equal enjoyment of their land rights.
  - Incorporate the Committee on World Food Security's Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, and other relevant international and regional frameworks, including provisions related to gender equality.
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#### Commentary

Good agricultural policy requires an understanding of the gender dimensions at stake. Making women's voices heard at all levels in decision-making is crucial. In order for land and agricultural laws, policies and programmes to benefit women, they must be designed from the outset with an integrated gender perspective. Taking into consideration the implications for both men and women is crucial to their successful implementation and sustainability. They should take into account the particular challenges faced by women when it comes to access, use and control over land and the multiple discrimination women can face. Care should also be taken to ensure that laws and policies that seem a priori gender-neutral do not in practice have a negative impact on women's rights.

Many countries have implemented land reform policies and programmes aimed at a more equitable distribution of land. Some have also provided for a gender-sensitive approach.

The Eritrean *Land Proclamation* of 1994, for example, explicitly states the principle of non-discrimination in land rights. In Burkina Faso, the law provides for the allocation of State-owned land without distinction based on sex or marital status. In Mozambique, the *Land Act* of 1997 ensures that both men and women have rights in State-owned land. In the United Republic of Tanzania, the *Land Act* of 1999 explicitly affirms the equality of men's and women's land rights.<sup>93</sup>

In Malawi, the *National Land Policy* of 2002 stipulates that, in view of the increasing population pressure on land as well as the devastating effects of HIV/AIDS, a clear policy on women's access to land should always be considered in policy planning and implementation strategies.

In Brazil, *Ordinance 33* of 2001, adopted by the Minister for Agrarian Development, institutionalizes

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<sup>93</sup> FAO, *Law and Sustainable Development since Rio: Legal Trends in Agriculture and Natural Resources Management*, FAO Legislative Study No. 73 (Rome, 2002), p. 252.

an affirmative action programme to facilitate rural women's access to land.

In the Philippines, *Republic Act No. 6657* of 1988 (instituting the Comprehensive Agrarian Reform) recognized that women must be guaranteed and assured equal right to ownership of the land, equal shares of the farm's produce, and representation in advisory or appropriate decision-making bodies.

In Nepal, in 2006 there was a 10 per cent tax exemption for land transferred to women. The same policy increased the exemption to 20 per cent in 2007 and 25 per cent in 2009. The High-level Commission for Scientific Land Reform and other organizations and activists advocating for women's land rights have proposed that the Government should increase this tax exemption to 50 per cent.

The UN-Habitat gender evaluation criteria for large-scale land tools are also an important resource for law

and policymakers. The framework explores how to judge whether a large-scale land tool is sufficiently gender-responsive, to identify where more work needs to be done and possible entry points to make a tool equally beneficial to women and men.<sup>94</sup>

In the United States, the Department of Agriculture's Farm Service Agency (FSA) set up the Women Outreach Program to provide educational information, referrals for technical assistance and networking opportunities to women.<sup>95</sup> Its ultimate goal is to increase the number of women owning and operating profitable farms, increase women's awareness of and participation in agriculture programmes, and raise their profile in leadership positions throughout the agriculture sectors of business, government and community. The FSA Women Outreach Program partners with the Department of Agriculture's other agencies, extension educators and leaders of community-based organizations to best meet the needs of rural women.

## 2. Land titling and registration

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### RECOMMENDATION

#### Laws, policies and programmes should:

- Ensure the default joint titling/ joint registration of land, housing and property as well as productive resources, and ensure that married women and unmarried women alike are able to benefit equally from titling and registration programmes.
- Ensure that titling and registration programmes are accompanied by effective awareness-raising initiatives aimed at educating women and men about women's rights to access, use and control over land and other productive resources.

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### Commentary

Land titling and registration systems seek to record tenure rights in a formal and centralized way. While land titling typically implies ownership, registration can include other forms of tenure beyond freehold, such as leasehold or cooperative tenure. Titling and registration programmes

have historically not benefited women to the same degree that they have benefited men.<sup>96</sup> For indigenous peoples, land titling systems have also historically disadvantaged their rights and had an impact on indigenous women as members of these communities.

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94 Available from [www.unhabitat.org/pmss/listItemDetails.aspx?publicationID=3270](http://www.unhabitat.org/pmss/listItemDetails.aspx?publicationID=3270) (accessed 29 July 2013).

95 Available from [www.fsa.usda.gov/FSA/webapp?area=home&subject=oued&topic=ops-wn](http://www.fsa.usda.gov/FSA/webapp?area=home&subject=oued&topic=ops-wn) (accessed 29 July 2013).

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96 Carmen Diana Deere, "Rural women and State policy: the Latin American agrarian reform experience", *World Development*, vol. 13, No. 9 (September 1985).

Joint titling/registration has several advantages. It acknowledges the contributions of all spouses to the household economy (which, for women, are often in the form of labour rather than cash). It also offers greater protection to women should the marriage break down. For example, if the names of both spouses are registered, one spouse would not be able to forcibly evict the other. Joint titling/registration also provides for automatic continuity when one spouse dies. The name of the surviving spouse or spouses would already be part of the land titling/registration, eliminating the need for reallocation of the land and thus making it easier to enforce the prohibition on high reallocation fees.

During 1988–1995, five countries in Latin America (Brazil, Colombia, Costa Rica, Honduras and Nicaragua) passed agrarian legislation for the joint adjudication or titling of land to couples, overturning prior practice.<sup>97</sup> In Ecuador, the National Rural Development Programme similarly adopted a joint titling approach. In Panama, reforms to the *Agrarian Code* also included joint titling as a requirement for the allocation of State lands.<sup>98</sup> Similarly, Viet Nam revised its *Marriage and Family Law* in 2001 to require joint titling for land and other family assets.<sup>99</sup> In India, the Government has been issuing joint pattas, or title deeds, in the names of both husband and wife, thereby making women joint owners of land.<sup>100</sup> In the Philippines, *Administrative Order No. 1* of 2001 protects the rights of both spouses to ownership of the land, by requiring the issuance of emancipation patents or certificates of landownership award in the name of both spouses.<sup>101</sup>

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97 *Taking Action: Achieving Gender Equality and Empowering Women*.

98 UN-Habitat, *Land Tenure, Housing Rights and Gender in Mexico* (Nairobi, 2005).

99 *Taking Action: Achieving Gender Equality and Empowering Women*.

100 FAO, Gender and Land Rights database.

101 *Ibid.*

In Ethiopia, the land certification programme attempts to address gender bias by providing a joint certificate to spouses, conferring joint landownership. Documentation in support of the certification includes maps of the land and photos of both husband and wife. Women are actively involved in the certification process and land administration committees at the local level are required to have at least one female member.

Several lessons have been drawn from titling/registration programmes which have recognized (or failed to recognize) co-ownership between spouses via joint titling/registration. Researchers looking into these questions have surmised that titling/registration legislation, regulations and guidelines should include the option of joint titling/registration and that marital property should be jointly titled/registered. They also recommend that the titling/registration process and forms should facilitate the inclusion of more than one owner; that titling/registration officials should receive training regarding marital property rights, co-ownership and joint titling/registration; and that information campaigns on the ground should explicitly inform both women and men about joint titling/registration.<sup>102</sup> Furthermore, titling and registration programmes must also be accompanied by other actions designed at ensuring that titles and registration have an empowering effect. This includes actions designed to remedy historic wrongs, such as failing to acknowledge indigenous peoples' title to lands, territories and resources.

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102 Susana Lastarria-Cornhiel and others, "Joint titling in Nicaragua, Indonesia, and Honduras: rapid appraisal synthesis", Land Tenure Center, University of Wisconsin-Madison, January 2003.

# CASE STUDY 6

## EMPOWERING WOMEN THROUGH LAND TENURE REFORM IN RWANDA

Since 2004, Rwanda has embarked on an ambitious land tenure reform programme aimed at increasing security of tenure to all landowners and eliminating all major forms of discrimination. This is largely being achieved through the establishment and implementation of new legal, regulatory and institutional frameworks. The effect of such reform will be transformational, as can already be seen – the rights of women and other vulnerable groups of society are being protected and enshrined as a matter of law, policy and practice.

The land registration process is purposely participatory and community-led. Regarding the procedure and implementation, for example, the community was consulted from the outset to ensure its views were prioritized during the preparatory and consultation phases of land reform and prior to making legislative changes. In fact, the reform programme itself is driven by the community, which takes the lead in parcel demarcation, adjudication, corrections, dealing with disputes and objections, through to issuing land leases.

At each stage, women are not only consulted, but they are also actively involved in running the reform programme. For example, in Rwanda, there is one registrar of land titles and five deputy registrars. In line with the decentralization policy, there are 30 district land bureaux across the country to handle land management and land registration. Apart from the National Land Commission, there are also land commissions in Kigali and in each district. In every land commission and land committee, women must represent at least 30 per cent of the commissioners and committee members. In the National Land Commission, which is composed of seven members, three are women; and out of 155 Kigali city and district land commissioners, 60 are women. In addition, of the five deputy registrars of land titles two are women. This serves to ensure that, in the land management institutions and at decision-making levels, women are represented and their rights are protected.

Concerning legal rights, women now have the right to deal in and inherit land, and their rights are protected through the deed. During the registration of owners, both men and women are required to be present. This is particularly important for couples that are legally married to ensure they are both registered as joint property owners. Women are registered in the same way as men and enjoy equal rights. Children (biological sons and daughters) are registered as individuals with a beneficial interest in their parents' land. This is particularly significant since land registration effectively clarifies inheritance issues – previously a major source of disputes with family members, on the death of the landowner(s), wrongly asserting rights over land to the detriment of the genuine heirs.

Women's land rights are also protected whenever land transactions are made. Currently, there is a simple land transfer template used by all districts across the country. District land officers, who are also public notaries in land-related matters, help the buyer and seller fill in the form. The form provides for the wife and husband to sign as co-owners, where applicable. When the land is jointly owned, all registered owners must be present and consent to any sale of land. They must each sign the sales agreement before the public notary. Women are no longer regarded only as witnesses to the sales contract. As is the case for men, women are allowed to use their land as collateral for money borrowed from banks and microfinance institutions.

The reform programme is transforming Rwanda and is increasing women's rights across the country. By 31 March 2012, private land owned by individuals was held as follows: (i) 11 per cent by women; (ii) 5 per cent by men; (iii) 83 per cent jointly by married couples; and (iv) 1 per cent by others.

The land reforms are ensuring that, as a matter of law and practice, land registration is easier and more efficient for individuals to protect their land rights. Women and men are both part of every stage of the administrative process, and their rights are protected indiscriminately.

*Source:* Thierry Hoza Ngoga, Rwanda National Resources Authority, Rwanda.

### 3. Access to loans and credits

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## RECOMMENDATION

### Laws, policies and programmes should:

- Ensure women's equal access to loans and credits, and ensure temporary special measures when required, in order to enable women to gain access to land and other productive resources regardless of marital status.
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### Commentary

Loans and credits provide an important avenue by which women can access land, housing and property, yet women often find it difficult to access formal financial systems. There are nevertheless many State-led initiatives. For example, in Nicaragua, *Law 209* of 1995 grants priority to women in access to credit. In Brazil, *Ordinance 121* of 2001, issued by the Ministry for Agrarian Development, reserves 30 per cent of credit granted under national assistance programmes specifically for women. A 2004 amendment to the *Land Act* of 1999 in the United Republic of Tanzania grants equal rights and access to land, loans and credit for women. In the Philippines, the 1992 *Women in Development Act* guarantees women equal access to government and private sector agricultural credit programmes, and the 1997 *Social Reform and Poverty Alleviation Act* also provides for credit programmes benefiting rural women.<sup>103</sup>

In Sri Lanka, a 2008 housing regulation provided that the Housing Authority in charge of providing loans would give preference to applications made jointly by husband and wife, a widow, or a wife who is divorced or who is legally separated from her husband. This regulation introduced an incentive to make joint applications for loans for land and housing. It also was a form of affirmative action, giving preference to women who file applications.

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<sup>103</sup> See *Law and Sustainable Development since Rio*, p. 261.

In India, the 2007-2012 *Eleventh Five-year Plan's* agenda for women in agriculture aims at ensuring effective and independent land rights for women and strengthening women's agricultural capacities. It also provides credit support to vulnerable women to purchase or lease land.<sup>104</sup>

In the Lao People's Democratic Republic, the 2004 *National Growth and Poverty Eradication Strategy* provided for assistance to women in accessing rural savings and credit schemes.<sup>105</sup>

In Cambodia, the Government, in collaboration with the National Bank of Cambodia, the Rural Development Bank and other donors, established guidelines and a strategic action plan to improve women's access to credit. Specific steps included promoting medium- and long-term credit services with lower interest rates in order to encourage effective and sustainable widespread micro finance and linking products with markets through the provision of credit to support and develop the products of farmers.<sup>106</sup>

Kyrgyzstan and Tajikistan were successful in establishing group lending for women without collateral. There have been small pilot projects on developing alternative means of financing for poor women through the provision of village-based wholesale credits.<sup>107</sup>

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<sup>104</sup> FAO, Gender and Land Rights database.

<sup>105</sup> Ibid.

<sup>106</sup> Ibid.

<sup>107</sup> Asyl Undeland, paper prepared for the Rural Development Fund, Kyrgyzstan.

## 4. Agricultural extension services

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### RECOMMENDATION

#### Laws, policies and programmes should:

- Ensure that agricultural extension services respond effectively to women's needs and reflect women's rights to equality in access to, use and control of land.
  - Ensure that extension workers are regularly trained in gender equality and gender mainstreaming, and held accountable for the implementation of gender-sensitive land policy and programming.
  - Provide women with effective and gender-responsive access to agricultural inputs, including seeds, tools and equipment/resources for farming.
  - Increase women's representation among agricultural extension service providers.
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#### Commentary

Agricultural extension services which respond to women's needs are also important, as these services typically provide farmer education, access to information, and technology and resource transfer.

In Botswana all agricultural extension regions have received assistance to establish regional gender committees to assist in gender mainstreaming and to facilitate information flow.<sup>108</sup>

In India, the *National Policy for the Empowerment of Women* of 2001 also provides that efforts should be made to ensure that the benefits of training, extension and various other programmes reach women engaged in agriculture in proportion to their numbers. It also provides that the programmes for training in soil conservation, forestry, dairy, horticulture, small animal husbandry, poultry, fisheries should be expanded to benefit women in the agriculture sector.<sup>109</sup>

In the Lao People's Democratic Republic, the 2004 *National Growth and Poverty Eradication Strategy* aims to address the concerns of rural women, and apply gender equity in extension and training services. The Strategy also applies affirmative action concerning staffing of provincial and district staff, including extension workers. It designates gender focal points in villages to promote improved agricultural practices.<sup>110</sup>

Providing women with direct access to agricultural inputs, including seeds, tools and equipment/resources for farming, is also relevant. FAO has noted that "today, if men and women had equal access to productive resources in agriculture, food output in developing countries would increase by between 2.5 and 4 per cent – enough to pull 100-150 million people out of hunger and help achieve Millennium Development Goal 1 on hunger and poverty reduction. Tomorrow, it would make it possible to feed a larger world."<sup>111</sup>

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<sup>108</sup> FAO, Gender and Land Rights database.

<sup>109</sup> Ibid.

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<sup>110</sup> Ibid.

<sup>111</sup> FAO, *FAO at Work 2010-2011: Women – Key to Food Security* (Rome, 2011).

## F. INSTITUTIONAL IMPLEMENTATION

### 1. Land authorities and institutions

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#### RECOMMENDATION

##### Laws, policies and programmes should:

- Ensure training in women's rights, gender mainstreaming and participatory gender planning for all authorities and institutions responsible for land administration and tenure, including within the context of implementing land reform (see also sect. A.1 above).
  - Ensure that land authorities are held accountable under laws, policies and programmes, for their delivery of programmes related to the effective and equal enjoyment of women's rights to land and other productive resources.
  - Ensure coherence and clarity of functions and authority between institutions responsible for the implementation of laws, policies and programmes related to the observance of women's rights to land and other productive resources.
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#### Commentary

Often there is a stark gap between the law and its implementation. This may be for several reasons. Yet, in all cases, effective institutions are pivotal to the implementation of laws, policies and programmes aimed at securing women's land rights. In the land sector, various institutions are relevant. The set-up will vary from country to country. Land institutions include those directly responsible for the governance of land tenure, such as institutions that allocate and administer land rights, as well as those responsible for land management and land use.

It is important to remember that such institutions will need to have the internal capacity, expertise and commitment to make women's access to, use and control of land and other productive resources a reality. Women's rights fare far better in an environment where their rights to access, use and control over land and other productive resources are clearly articulated and defended. This means not taking them for granted, and not assuming that gender-neutral laws, policies and programming will be enough to meet women's needs.

Protecting women's rights effectively begins with providing capacity-building and training on women's rights and gender mainstreaming to all land officials charged with implementing land policies and programming. In addition, such institutions should adopt clear, transparent and participatory gender planning processes, in line with women's rights to participation (see sect. A.1 above). Such authorities must also be held accountable for ensuring that gender is effectively mainstreamed into all programmes and that there are adequate programmes targeting women's rights to land and other productive resources.

Women's land rights also need to be prioritized within government agencies, advocacy organizations and donor partners to maintain and reinforce the pressure to address women's issues. In Vanuatu, the underresourced Department of Women's Affairs relies on its network of advocates within the land sector's stakeholders to support its efforts relating to women's access to land and other productive resources. These professional networks are essential to building a coalition of support for the paradigm shift that is required in Vanuatu to pursue the concept of group rights, inclusive of women. The inclusion of women in articulating group rights to land will ensure that benefit-sharing from that land reaches women and their families.

In the Plurinational State of Bolivia, the National Institute for Agrarian Reform applies gender equality criteria to the distribution, management, ownership and use of land.<sup>112</sup> In 2004, the Department of Agriculture of the Philippines issued *Special Order No. 21*, directing all agency units to mainstream gender concerns. It set up a technical working group to formulate a strategic plan for mainstreaming gender through data generation of selected agricultural information. Gender-sensitivity training was also provided for Department officials, middle management and employees.<sup>113</sup>

In Ghana, the Land Administration Project (created under the 1999 *National Land Policy*, as amended in 2002) has led to a number of initiatives focused on training and awareness-raising among the staff of the land sector

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<sup>112</sup> FAO, Gender and Land Rights database.

<sup>113</sup> Ibid.

agencies, as well as among the traditional authorities of the Project's pilot customary land secretariats.<sup>114</sup>

In case study 7 on Kyrgyzstan and Tajikistan, institutional efforts to promote women's land rights focused on

building the knowledge and capabilities of key actors to adopt a rights-based approach to gender equality and women's empowerment, and conduct gender-responsive policy and decision-making within the development process, particularly as it related to land reform.

## 2. Gender-responsive land budgeting

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### RECOMMENDATION

#### Laws, policies and programmes should:

- Ensure that land budgeting reflects an integrated gender perspective and tracks how budgets respond to gender equality commitments and targets.
  - Ensure that land budgeting is participatory and in particular reflects the meaningful participation of women.
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#### Commentary

Institutions charged with protecting women's rights over land and other productive resources will be successful only when they are adequately supported with both human and financial resources. "Gender-responsive budgeting" is budgeting that reflects an integrated gender perspective and tracks how budgets respond to gender equality commitments and targets. Many countries, such as Australia, Mozambique, Namibia, Nepal, Switzerland, Uganda, the United Kingdom and the United Republic of Tanzania, have incorporated gender equality principles in their national budgets.

In general, gender budgets can support the production and dissemination of sex-disaggregated data and facilitate linkages between the national and local levels in budgeting and governance. In addition, "gender-responsive budgeting has emerged as part of local development and community-based, community-driven or decentralized governance programmes, which enables local people to voice their needs, take part in local budget processes, as well as in budget monitoring and advocacy."<sup>115</sup>

Gender-responsive budgeting can also illuminate the reasons for the gaps between policies and implementa-

tion. In South Africa, for example, the Women's Budget Initiative's main objective was to make the functioning of the Government transparent and to hold it accountable for implementing gender-responsive policies.<sup>116</sup>

In Rwanda, the Government allocated 5 million Rwanda francs to raising awareness about the *Matrimonial Regimes, Liberties and Succession Law* of 2000 among women. This Law recognized, for the first time, the right of women and girls to inherit and own land and property.

While there are not many specific examples of gender-sensitive land budgeting that can be highlighted, this is an area where experts agree that more needs to be done. On land specifically, gender-sensitive budgeting would help to ensure that women and men benefit equally, for example, from land allocation programmes and land reform processes. Specific resources must be set aside to make these programmes and processes meaningful to, and inclusive of, women. More generally, gender budgeting in this area would also help to ensure accountability and play a significant role in bridging the gap between gender-sensitive land policy and its effective implementation.

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<sup>114</sup> Ibid.

<sup>115</sup> United Nations Economic and Social Commission for Asia and the Pacific, "Strengthening national mechanisms for gender equality and the empowerment of women: regional study – Asia and the Pacific", May 2010.

<sup>116</sup> Deepti Bhatnagar and others, "Women's budget initiative: South Africa". Available from [http://siteresources.worldbank.org/INTEMPowerment/Resources/14659\\_5-Afr-Wmn-Budg-web.pdf](http://siteresources.worldbank.org/INTEMPowerment/Resources/14659_5-Afr-Wmn-Budg-web.pdf) (accessed 29 July 2013).

# CASE STUDY 7

## PROMOTING RURAL WOMEN'S RIGHTS TO LAND IN KYRGYZSTAN AND TAJIKISTAN

Through UN Women, extensive training was provided to government staff and civil society groups in Kyrgyzstan and Tajikistan to improve gender-sensitivity and increase understanding about women's human rights, especially women's land rights. The Convention on the Elimination of All Forms of Discrimination against Women was used as a key reference to discuss State obligations to remove discrimination against women and empower them, and show how this could translate into actions in the national context. Laws governing land rights were examined in detail to illustrate their different impact on men and women, and show how they could directly or indirectly give rise to inequalities and discrimination.

Local government was an especially important target for capacity development activities. In Kyrgyzstan, almost 400 heads of village councils attended workshops to discuss the *Law on Agricultural Land Management* and provisions in other laws such as the civil, family and land codes that were relevant to women's property and inheritance rights. These local officials also heard directly from women whose land rights had been violated and learned about the State's obligations to women under the Convention. In addition, 70 village and district-level land specialists were trained in women's land rights and data collection techniques to better enable them to respond to rural women's concerns and give them accurate information and advice on land issues.

*Source:* Asyl Undeland, Rural Development Fund, Kyrgyzstan.

### 3. Gender-sensitive data collection, monitoring and evaluation

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## RECOMMENDATION

### Laws, policies and programmes should:

- Ensure the collection of gender-sensitive data and sex-disaggregated data on access to, use and control of land and other productive resources and also ensure disaggregation of data on other relevant grounds, such as gender and indigenous identity or gender and disability.
  - Ensure that agricultural censuses focus attention on areas in which women are relatively more active, such as small-scale farming.
  - Ensure that monitoring and evaluation involve women, and that women participate in the identification of qualitative and quantitative indicators to be monitored, the monitoring process itself, and the analysis and evaluation of the results (see also sect. A.1 above).
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### Commentary

Not only should law, policy and programmes related to productive resources and land incorporate women's rights in their design and implementation, they must also incorporate this perspective throughout all phases, including monitoring and evaluation. In general, gender-sensitive monitoring and evaluation better ensure that the policy or programme is being effectively implemented and that it benefits women and men equally.

In order to accomplish this task, gender-sensitive data and sex-disaggregated data are very useful diagnostic tools. Based on the human rights normative framework, OHCHR recommends that “in addition to disaggregating commonly compiled statistics by sex ..., making women more visible in statistics and monitoring gender equality require women-specific statistics ...” and “expanding statistics in critical areas, such as ... access to assets (e.g., ownership of land, housing) ...”<sup>117</sup> FAO recommends in particular that “agricultural censuses should focus more attention on areas in which women are relatively more active and collect sex-disaggregated data on ownership of, access to and control over productive resources such as land, water, equipment, inputs, information and credit.”<sup>118</sup> The World Bank, FAO and IFAD provide specific guidance on sound gendered monitoring and evaluation systems and setting gender-sensitive indicators and collecting gender-disaggregated data.<sup>119</sup>

In the Philippines, *Administrative Order No. 1* of 2001 provides for the integration of a gender-responsive reporting system in the reporting for land acquisition and distribution and in the computerized information system of the Department of Agriculture. In the Lao People's Democratic Republic, the 2004 *National Growth and Poverty Eradication Strategy* supports the production of gender-related data and needs assessments and uses gender-related indicators to monitor projects (see also case study 8 on China).<sup>120</sup>

At the regional level, the *Nairobi Action Plan on Large-Scale Land-Based Investments in Africa* also provides for the establishment of a “monitoring and reporting mechanism for tracking large-scale land-based investments with a view to ensuring that these ventures are beneficial to national economic development and local communities, including women ...”

Civil society also has a key role to play in monitoring and evaluation. For example, the Uganda Land Alliance is a non-governmental organization which monitors the implementation of policies and structures established by the *Land Act* of 1998 to ensure that the new institutions operate in a gender-sensitive manner.

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<sup>117</sup> *Human Rights Indicators: A Guide to Measurement and Implementation*.

<sup>118</sup> FAO, *The State of Food and Agriculture: 2010-2011: Women in Agriculture – Closing the Gender Gap for Development* (Rome, 2011).

<sup>119</sup> *Agriculture and Rural Development: Gender in Agriculture – Sourcebook*, in particular module 16.

<sup>120</sup> FAO, Gender and Land Rights database.

# CASE STUDY 8

## GENDER-SENSITIVE DATA COLLECTION AND ANALYSIS IN CHINA

The All-China Women's Federation, the largest women's organization in China, plays a prominent role in promoting gender equality and safeguarding the rights and interests of women in China. One of its initiatives is a nationwide survey on the social status of women, conducted every ten years in cooperation with the National Bureau of Statistics. The survey was conducted in 1990, 2000 and 2010. These surveys provide important information to legislators, government and other organizations on progress and key issues related to gender equality, and they aim to lay a solid basis for facilitating policy and legal changes and promoting gender equality in China. Rural women's land rights are identified in the 2010 survey as one of the six key issues faced by women in the past ten years.

The Federation, as one of the main advocates for women's rights and interests in China, has continuously made policy recommendations to relevant government departments regarding rural women's land rights. In this connection, it pointed out that it is important to address rural women's land rights issues by (a) including women's names in the land documents; (b) legally defining the membership of collectives; (c) ensuring women's equal rights to compensation in cases of land-grabbing; (d) strengthening the review of the village rules by the civil affairs sector of the local government; (e) increasing women's participation in village-level decision-making; and (f) ensuring women's equal access to justice on land rights.

*Source:* Xiaobei Wang, Landesa Center for Women's Land Rights, China.

## G. AWARENESS-RAISING AND TRAINING

### 1. Community awareness-raising

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#### RECOMMENDATION

##### Laws, policies and programmes should:

- Provide for awareness campaigns (for example, via television, radio, print media, and the Internet) to inform the public about women's rights to access, use and control land and other productive resources, distributing such information in local languages.
  - Ensure that such awareness campaigns effectively involve and reach marginalized and illiterate women (see also sect. A.1 above).
  - Support community awareness-raising by civil society, including women's groups and non-governmental organizations.
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#### Commentary

Broad awareness campaigns are necessary to inform the public about women's land rights more generally and to rally support. This step is crucial even in countries where formal legislation protects women's rights. Lack of knowledge of legal protection is a formidable barrier to claiming rights and sociocultural norms may hinder the realization of women's rights.

To overcome these barriers, the HIV and legal empowerment programme of UN Women has increased the knowledge and awareness of approximately 15,000 women living with or affected by HIV regarding their property and inheritance rights and the available legal services in the community, both formal and informal. Such increased awareness, coupled with more available and accessible legal aid in the community, has facilitated women's ability to report property- and inheritance-related violations and to seek legal redress. Similar efforts have been made by development organizations like ActionAid, which helped widows to learn about and claim their rights.

In Rwanda, the Government has taken steps to ensure that women are included in the land registration process. The National Land Centre has undertaken widespread training of local land committees across Rwanda, including making a video showing how women's rights should be recorded. Three NGOs, LandNet Rwanda, Imbaraga and Haguruka, have disseminated illustrated information booklets on the *Organic Land Law* of 2005 and the *Matrimonial Regimes, Liberties and Succession Law* of 2000, explaining their content in simple terms for everyone to understand. NGOs have also monitored land registration trials and

provided additional support and awareness-raising for land authorities<sup>121</sup> (see also case study 6 on Rwanda).

Since agrarian and land reform began in Kyrgyzstan, the Centre for Agrarian Land Reform in the Ministry of Agriculture, Water Resources and Processing Industry has raised public awareness of national legislation. The Centre published informational materials on 25 topics covering land and agrarian reform, as well as booklets and brochures. From 2002 to 2005, over 800 training sessions on agrarian land reform were organized for rural residents, including women. Information was also broadcast on radio and television, and published in newspapers.<sup>122</sup>

In Viet Nam, legal information, training and other support services in rural areas specifically aimed at raising women's awareness of the land laws are provided by the Ministry of Justice and other government agencies, together with organizations such as the Women's Union and the Farmers' Union.<sup>123</sup>

Many civil society organizations intervene proactively with traditional leaders within their communities to push for progressive change to discriminatory customs. In Zambia, the Justice for Widows and Orphans Project has conducted mock land trials on inheritance rights in order to raise awareness within communities and among local leaders.

Awareness-raising through theatre and street drama is also an effective, enjoyable way of gathering knowledge

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<sup>121</sup> *Progress of the World's Women 2011–2012: In Pursuit of Justice.*

<sup>122</sup> FAO, Gender and Land Rights database.

<sup>123</sup> *Ibid.*

# CASE STUDY 9

## ORGANIZING FOR LAND: THE WORKING GROUP ON WOMEN'S LANDOWNERSHIP IN GUJARAT, INDIA

Central to the movement to gain recognition for women's land rights is collective struggle and action. It was in this spirit that the Working Group on Women's Landownership, a network of 23 organizations working for women's rights in 12 districts of Gujarat, came together in June 2002. Before undertaking any advocacy for women's land rights, they felt it important to understand the situation on the ground, and gather evidence that was meaningful and reliable. So the Working Group's first strategy was to study the status of women in agriculture in Gujarat (2004), to review the gap between law and practice and the extent of legal awareness (2004), and to analyse Muslim women's land rights (2006).

These studies gave insights into the issues at hand and helped develop responsive and sensitive strategies to address them. The first study conducted with 403 women owning land in Gujarat found that 48 per cent were widows who had claimed a share in their husband's property, 41 per cent were wives who had received titles with a view to claiming particular State-announced tax benefits or to their husbands avoiding land ceilings laid down by law (many did not even know they held land titles) and less than 5 per cent were women who had inherited a share of their parents' property because there were no male heirs. Women, however, accounted for only 12 per cent of total landholders. Twenty per cent of the women did cultivate their own land, take decisions on cropping and sales, yet faced difficulties in accessing irrigation, credit and technical information (less than 10 per cent had access to credit or agricultural cooperatives), a negative attitude from their family members, and a lack of State support.

As a result, the Working Group initiated work at several levels:

- (a) Organizing women at the grass-roots level and building peer-support groups, increasing the capacity of different types of grass-roots organizations to introduce and negotiate the issue of women and landownership, legal awareness and implementation of existing laws (with back-up from a group of lawyers), facilitating collective learning, exchange and experience-sharing;
- (b) Raising the awareness of the tax officials as well as caste/community institutions through training programmes, regular dialogues and consultations, participating in varsai (titling) camps, as well as advocacy; and
- (c) Changing the public mindset by reaching out to the media, other networks (including women's and development organizations), academic institutions, through organizing public events, research reports, newsletters, and taking up cases.

Most important perhaps is the emphasis on establishing institutional mechanisms to promote women's access to a range of productive assets. Called gender justice centres, women and land committees, people's rights centres, legal aid centres, panchayat information centres or just women's federations, these mechanisms facilitate the interface between the women and the State to realize entitlements, be they kisan credit cards, widow pensions, ration cards or registration. They also seek to work with local panchayats, in particular supporting elected women representatives to take forward their agendas and struggles. Such participation and engagement with local government help bring their demands to legitimate forums and governance structures, establishing systems of accountability in the process, rather than carrying out small-scale independent activities.

The systematic demonstration of gaps between policy and implementation through collectively gathered and analysed data has enabled the Working Group to demand accountability from government institutions at all levels – the panchayats, the tax office as well as different departments of the State government. A good example of the attempts by the State here to ensure the rule of law and good governance is the varsai camps, which provide titles with minimum bureaucratic hurdles, while at the same time incentivizing households to register land in women's names.

*Source:* Nitya Rao, University of East Anglia, United Kingdom.

of one's rights. In Sri Lanka, street dramas and short plays developed by organizations have helped to promote women's land rights. The head of household concept, joint ownership of property, domestic violence and discrimination against women were some of the issues raised in the playlets. One playlet looked at discrimination against women belonging to different communities following the tsunami. Another script was developed as a street drama and acted out in an urban slum where audience participation was encouraged. Similarly, in Vanuatu, community theatre was used to communicate

the land lease research findings of the World Bank's Jastis Blong Evriwan programme on Epi Island, which visually demonstrated the absence of women in decision-making about land and consequently mobilized communities to involve more members in major decisions and seek advisory support for these land decisions that have an impact on community livelihoods.

In Namibia, the Legal Assistance Centre has published popular comics on issues such as writing a will and what to do if someone stops paying maintenance.

## 2. Legal literacy

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### RECOMMENDATION

#### Laws, policies and programmes should:

- Ensure that women benefit from targeted and accessible legal literacy campaigns and programmes in their language to help them understand their rights to access and control productive resources, and where to claim them.
  - Ensure that legal literacy programmes in general include a women's land rights component.
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#### Commentary

Even when legal and regulatory frameworks exist to protect women's land rights, women must know and understand their rights for them to be effective in practice. Legal literacy must go beyond just knowing what one's rights are. Rather, women must also know how they can exercise and enforce their rights. A recent study observed that a legally aware community translates into increased demand and higher expectation that informal justice systems will deliver justice and be more accountable.<sup>124</sup>

Good practices include understanding the different information needs of women and men, overcoming any barriers that may prevent women from participating in events or processes which provide information. For example, women might not attend an awareness-raising event if the event gets in the way of their other important duties like cooking for the family. Also, women might not

speak out and ask questions in a public meeting where men are present. Good practices also pay attention to other factors such as age, language, literacy, economic status, disability, marital status and factors which might affect a woman's participation in an event even with other women.

For example, in Rwanda, there are challenges with the legal literacy of rural men and women. Also, it is not socially acceptable for women to speak up in front of men. Two things were used to good effect in pilot land tenure regularization and dispute resolution interventions: first, community theatre was used to raise the whole community's awareness of the importance of women's land rights being recognized on land documents. The play was written and performed by Rwandans at a time of day when women and men could attend. Also, before the start of the land titling exercise and in addition to general meetings, women-only meetings were held – led by a woman, and at a time that women could attend, so that women could ask questions about the process safely (see also case study 6 on Rwanda).

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<sup>124</sup> UN Women, United Nations Children's Fund and UNDP, *Informal Justice Systems: Charting a Course for Human Rights-Based Engagement* (New York, 2012), p. 24. See also International Development Law Organization, *Accessing Justice: Models, Strategies and Best Practices on Women's Empowerment* (Rome, 2013).

# CASE STUDY 10

## RAISING AWARENESS ABOUT WOMEN'S LAND RIGHTS IN ECUADOR

Between 2010 and 2011, rural women in Ecuador got organized to promote their equal rights to land and to work towards public policies which included an integrated gender perspective. This was done in an active citizenship style, promoting women's empowerment. Throughout the country, thousands of diverse rural women played active roles in key political spaces – and their voices were heard.

During this period, parallel actions were taken covering both political and technical processes. Rural women held awareness and consulting workshops, many focusing specifically on issues related to land. Here women could come together to reflect on their lives and their political demands, as well as their individual and collective aspirations. Training on rights and duties, gender mainstreaming, demand mechanisms and political lobbying were also extremely useful. Rural women are now more aware of their rights and opportunities.

Political encounters and dialogues with the authorities from different parts of government were developed. Law and policy proposals were presented. The public policy proposals put forth by rural women addressed their social reality, but also sought to enhance the space given to their organizations and networks, and thereby improve their role in governance and their political participation. Rural women are now organized by teams and follow up agreements made with the authorities to ensure that final legislation includes their demands.

*Source:* Elizabeth Garcia, DECIDE Studies Corporation, Ecuador.

Civil society and government partnerships can be very powerful in achieving legal literacy. Different forms of media may also be used to help inform women about their rights and how to claim them. In Kenya, radio programmes featuring the testimonies of disinherited women who successfully fought their inheritance cases have been particularly effective. Such steps are also important in situations where people use informal justice systems to claim their rights.

Legal literacy campaigns can take various forms, for example street theatre, radio and television programmes,

Internet and mobile phone communications, as well as disseminating easy-to-understand written materials (for example, leaflets, booklets, brochures, posters and postcards) which explain key aspects of women's rights in simple terms. In addition, it is important to translate laws or pertinent sections/summaries into local languages, as well as to publish information in local newsletters, magazines and newspapers so as to increase awareness about women's rights to access, use and control over land and other productive resources (see also case study 1 on Brazil, case study 9 on India and case study 10 on Ecuador).

## H. PARTICULAR GROUPS OF WOMEN

Land laws, policies and programmes should ensure that attention is given to particular groups of women. Only some groups are highlighted below. For more information, see sect. A.2 above.

### 1. Indigenous women

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#### RECOMMENDATION

##### Laws, policies and programmes should:

- Recognize the rights of ownership and possession of indigenous peoples over the lands which they traditionally occupy.
- Uphold the principle of free, prior and informed consent.
- Ensure that indigenous women and men have equal, secure and sustainable rights to land and other productive resources, regardless of their marital or other status.
- Recognize the cultural and spiritual significance of the land for indigenous peoples.
- Promote the effective participation of women in decisions regarding their tenure systems through their local or traditional institutions, including in collective tenure systems.
- Implement, where necessary, temporary special measures to increase the capacity of women to participate fully in decision-making and governance of their tenure systems.
- Ensure an integrated approach to advancing the rights of indigenous women to land and other productive resources, taking into consideration the unique rights of indigenous women. These unique rights concern the traditional knowledge they hold, for example, in relation to medicines.

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#### Commentary

Indigenous women are often barred from exercising their land rights simply because they are indigenous. Indigenous peoples generally face violations of

their right to self-determination, and their unique relationship to the land on which they live and the natural resources that it provides is not always

recognized. They frequently lack security of tenure and legal recognition of their land rights and rights over productive resources. On the other hand, indigenous women also face challenges as women, and they may suffer some of the same kinds of discriminatory practices that other women living under customary systems face. For example, as widows they may be unable to access land for themselves and their families. This is the essential challenge for indigenous women – to realize their individual and collective rights in tandem – which is of particular relevance in the context of the productive use of resources and land.<sup>125</sup>

There are some effective approaches which specifically address the land rights of indigenous women. In

India, the Orissa Tribal Empowerment and Livelihoods Programme confers ownership rights to indigenous communities that have been cultivating hillsides without title for many decades. It is foreseen that indigenous women will be given special attention.

In the Philippines, the *Indigenous Peoples' Rights Act* of 1997 recognizes indigenous people's ancestral rights over land by providing for the application of customary land tenure to the ancestral domain. It also guarantees gender equality and the human rights of indigenous women and their participation in decision-making processes at all levels.<sup>126</sup> Furthermore, it refers to the Convention on the Elimination of All Forms of Discrimination against Women. It also reserves at least two seats on the National Commission on Indigenous Peoples for women.

## 2. Women affected by HIV

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### RECOMMENDATION

#### National HIV plans and programmes should:

- Incorporate gender equality provisions, including specific measures aimed at ensuring women's rights to land and other productive resources.
  - Ensure the meaningful engagement of women living with or affected by HIV in the development of national strategic plans and programmes.
  - Encourage customary and religious leaders to raise awareness within their own communities about women's rights, including the specific needs and rights of women living with or affected by HIV to land and other productive resources.
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### Commentary

The impact of women's access to, and control over, productive assets within the context of HIV deserves special consideration. Increasingly, land is recognized as a key social determinant of health, and research evidence affirms the importance of women's land rights in preventing the transmission of HIV as well as in maintaining health and well-being. In particular,

research demonstrates the linkage between the growing prevalence of HIV among women and "laws that inhibit the full enjoyment of women's rights to landownership and inheritance."<sup>127</sup> In general terms, protecting women's property rights has both a *preventive* and a *mitigating* impact in the context of the HIV epidemic.

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<sup>125</sup> See also UN-Habitat, *Securing Land Rights for Indigenous Peoples in Cities* (Nairobi, 2011).

<sup>126</sup> See also "Final study on indigenous peoples and the right to participate in decision-making" (A/HRC/EMRIP/2011/2).

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<sup>127</sup> Commission on Human Rights resolution 2005/25 on women's equal ownership, access to and control over land and the equal rights to own property and to adequate housing.

On the *preventive* side, security of tenure over housing and land plays a crucial role in providing women with economic security, a livelihood and dignity. Numerous studies have demonstrated how the threat of poverty and insecurity drive women to remain in violent relationships or to engage in behaviours, such as unprotected sex, that put them at increased risk of contracting HIV. In fact, some have suggested that the way to make sex safer for women is by ensuring that they have access not only to condoms but to title deeds.<sup>128</sup>

In terms of *mitigation*, evidence shows that the economic security which can be achieved through protecting women's land rights strengthens their ability to manage the impact of HIV. Seen in this light, land rights can help ease the impact of HIV on individuals and families, and provide the basis for care and support for women living with HIV or those who are responsible for caring for family members living with HIV. Adequate food, access to shelter, clean water and access to health services, including HIV and sexual and reproductive health services, all help to keep those living with HIV healthy. For example, secure housing facilitates women's access to HIV-related treatment, care and support provided through formal health-care systems and informal community networks.

There can be no doubt that women affected by HIV face unique challenges when it comes to realizing their rights to access, use and control land and other productive resources. The stigma associated with HIV deters women from reporting property and inheritance rights violations or pursuing related claims. Moreover, the blame ascribed to women in the context of HIV remains a powerful force for discrimination and ill-treatment. According to UN Women, HIV often makes women's position even more precarious, when widows are stigmatized as the carriers of the infection, shunned by their husband's family and thrown off their land.<sup>129</sup> Moreover, women often lose control over assets upon the dissolution of a marriage or death of a spouse.

Many national HIV plans and strategies do incorporate elements of gender equality. Some also include specific references to women's land, housing and

property rights. In Rwanda, for example, one of the key recommendations of the National Accelerated Plan for Women, Girls, Gender Equality and HIV—2010–2014 is to raise awareness on women's and girls' property and inheritance rights among the community and law enforcement, to promote respect for and enforcement of women's and girls' rights.

To mitigate the impact of unequal property and inheritance rights, the UNDP regional programme on HIV in Asia and the Pacific, in partnership with UN Women and UNAIDS, launched an initiative to increase women's access to land and property in the context of HIV. The Asia Pacific Court of Women was organized in 2007 at the International Congress on AIDS in Asia and the Pacific. Two Supreme Court judges from Sri Lanka and Nepal and five expert witnesses heard testimony from 22 women representing 11 countries across the Asia-Pacific region. Those women shared their stories of disinheritance and property-grabbing owing to their HIV status. Ultimately, the Court called for a simultaneous process of legal reform and social transformation.<sup>130</sup>

In sub-Saharan Africa, the UN Women HIV and legal empowerment programme has mobilized the leadership and encouraged the participation of women living with HIV in decision-making spaces and community advocacy efforts, including in relation to land reform and constitutional review. Under this programme, women living with HIV have been trained as community paralegals or watchdogs, and their representation on village land or development committees has increased (see also sects. A.1 and C.2 above).

Working with community leaders is especially important, and this also applies in relation to HIV. The Global Commission on HIV and the Law recently observed that "perhaps the most promising route to change is adaptation of traditional legal systems to promote equality for women and their children and recruitment of respected community members to mediate inheritance disputes between widows and their in-laws."<sup>131</sup> The Kenya Legal and Ethical

<sup>128</sup> See Caroline Sweetman, "How title deeds make sex safer: women's property rights in an era of HIV", From Poverty to Power Background Paper (Oxfam International, 2008).

<sup>129</sup> *Progress of the World's Women 2011–2012: In Pursuit of Justice*.

<sup>130</sup> COHRE and others, *Tools for Change: Applying United Nations Standards to Secure Women's Housing, Land, and Property Rights in the Context of HIV* (2012).

<sup>131</sup> Global Commission on HIV and the Law, *Risks, Rights & Health* (New York, UNDP, July 2012).

Issues Network on HIV/AIDS is educating elders in alternative dispute resolution and training them, as well as widows and local law enforcement officials, to create awareness of women's human rights. Such an approach recognizes that customary law can and

does evolve, and that local mechanisms for enforcing customary law can be strengthened to promote and protect women's rights<sup>132</sup> (see also sect. C above, as well as case study 6 on Rwanda).

### 3. Displaced women

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## RECOMMENDATION

### Laws, policies and programmes should:

- Ensure the equal right of displaced women and men to return voluntarily in safety and dignity to their former homes and lands, as well as to legal security of tenure, property ownership and equal access to inheritance, and to use, control and access land, housing and property.
  - Ensure the equal right of men and women to land, housing and property restitution.
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### Commentary

Conflict and disaster are frequent precursors of mass displacement and of loss of land and other productive resources, in particular for women whose tenure rights are often insecure to begin with. Conflict and disaster tend to alienate women from restitution processes, which often benefit men. UN-Habitat has observed that “if women's enjoyment of their rights to land, housing and property is obstructed during times of relative peace, their enjoyment of these rights during conflict situations is nearly prohibited.”<sup>133</sup>

Post-conflict and post-disaster situations should rather be seen as crucial opportunities to assert women's rights. For example, in 1998, the *Kigali Plan of Action*, which emerged from the Inter-Regional Consultation on Women's Land and Property Rights in Situations of Conflict and Reconstruction, indicated that “women should have adequate and secure rights to property. These rights must be equal to those of men, and a

woman should not be dependent upon a man in order to secure or enjoy those rights.”<sup>134</sup>

In Colombia, where displaced women have been more vulnerable to violent land seizures and face greater security risks than men when attempting to reclaim their land, the Constitutional Court has played an important role in guaranteeing women's land rights. For example, Court Order (*auto*) 092 of 2008 noted that displacement had had a disproportionate impact on women and recognized that “women often only had their land rights protected via their male partners. Informal marriages, lack of knowledge about how their partners acquired the land and the variety of types of land tenure mean that female heads of households are extremely vulnerable to losing their right to their land.”<sup>135</sup>

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<sup>132</sup> Ibid.

<sup>133</sup> United Nations Centre for Human Settlements, *Women's Rights to Land, Housing and Property in Post-conflict Situations and During Reconstruction: A Global Overview*, Land Management Series No. 9 (Nairobi, 1999).

<sup>134</sup> The Inter-regional Consultation was hosted by Rwanda and sponsored by the United Nations Centre for Human Settlements, UNDP, the United Nations Development Fund for Women and the Office of the United Nations High Commissioner for Refugees.

<sup>135</sup> ABColombia, “Returning land to Colombia's victims”, May 2011.

Order 092 also directed the Government to establish new programmes to assist displaced women, including a specific programme on access to land. Colombia's *Victims and Land Restitution Law* (2011) contains specific provisions addressing women's rights within the context of land restitution, and provides for special protection of and attention to displaced women (see also case study 11 on Colombia).<sup>136</sup>

In Sri Lanka, the North East Housing Reconstruction Programme gave financial aid to reconstruct houses damaged by the war. The houses were assessed to see if they are fully or partly damaged. Decisions to reconstruct were based on a marking scheme. The application form for financial aid needed to be signed by

both spouses and the money was deposited into a joint account maintained by both the husband and the wife. Priority was also given to female heads of households in the application process (see also chap. III.A.2).

Similarly, the 2010 *Action Plan for National Recovery and Development of Haiti*, adopted in the aftermath of the devastating earthquake of January 2010, contains specific language around secure land tenure and embraces gender equality as a cross-cutting theme.

The Guiding Principles on Internal Displacement and the Pinheiro Principles provide further specific provisions related to the rights of displaced women.

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<sup>136</sup> See also Oficina en Colombia del Alto Comisionado de las Naciones Unidas para los Derechos Humanos y Agencia Canadiense para el Desarrollo Internacional, *Tierras y Derechos Humanos: Compilación de Jurisprudencia y Doctrina Nacional e Internacional* (Bogotá, 2012).

# CASE STUDY 11

## ENSURING WOMEN'S ACCESS TO LAND AFTER VIOLENCE IN COLOMBIA

Land has been central to Colombia's protracted internal armed conflict. Its unequal distribution has given rise to social protest and peasant movements in the past. Today, it continues to underlie issues of territorial control and political and economic power. Over the past 25 years, upwards of 6 million hectares of agricultural land is estimated to have been violently seized by armed actors or forcibly abandoned by the displaced population. Women constitute a particularly vulnerable group of internally displaced persons. Only recently has the need for restitution of land to the displaced been recognized as an essential step towards peace. In June 2011, Congress approved Law 1448, known as the *Law on Victims and Land Restitution*. It adopts a gender-sensitive approach and recognizes the particular disadvantages women face when claiming their land, such as the risk of gender-based violence, the lack of formal land deeds and the weak social recognition of their land rights.

While the implementation of the law is still in its infancy, the regulations refer to a general concept of *prioritization of women*, including in administrative and judicial procedures of land restitution; the factual handing over of land; access to special credits and productive resources; and formal titling. This last action is to be seen as an effective approach to ensuring legal security in a country where over 40 per cent of the landed possessions – and even more in the case of women's land – are untitled. The law also provides that in all cases of restitution, land deeds should be issued and registered as joint titles for spouses or permanent partners. Up to now, joint titling had been limited to isolated State transactions of land. Women will also benefit from the fact that, in judicial procedures against persons committing violent acts, the burden of proof is shifted from the victims to the perpetrators.

*Source:* Donny Meertens, Pontificia Universidad Javeriana, Colombia.



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UN Women is the UN organization dedicated to gender equality and the empowerment of women. A global champion for women and girls, UN Women was established to accelerate progress on meeting their needs worldwide.

UN Women supports UN Member States as they set global standards for achieving gender equality, and works with governments and civil society to design laws, policies, programmes and services needed to implement these standards. It stands behind women's equal participation in all aspects of life, focusing on five priority areas: increasing women's leadership and participation; ending violence against women; engaging women in all aspects of peace and security processes; enhancing women's economic empowerment; and making gender equality central to national development planning and budgeting. UN Women also coordinates and promotes the UN system's work in advancing gender equality.

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